85-1754

No.

Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1985

DENNIS BOBER, et al.,
Appellants,

v.

WALGREEN COMPANY, et al.,
Appellees.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

DANIEL P. MADDEN
Suite 401
109 North Dearborn Street
Chicago, Illinois 60602
(312) 853-0235
Counsel for Appellants

April, 1986

The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

Does the twenty-five percent signature level required by Illinois in local option elections unconstitutionally burden the right of access to the ballot in violation of the First and Fourteenth Amendments to the United States Constitution and the guarantees of Equal Protection?

LIST OF PARTIES

The parties to the proceedings below include the Appellants, Dennis E. Bober, Jeanette M. Krstolich, Juju Lien, Stanley B. Lee, Judith M. Bober, Michael R. Maddox, Virginia J. Newman, L. P. F. Tangora, Martin Tangora, William Cunard, James Reiman, James R. Brodi, Lisa M. Pope, and Marlys Bucholtz, as well as the Appellees, Walgreen Company, Klass Brake, Inc., Louise Showman, d/b/a Hideaway Lounge, Lewis H. Windon, d/b/a The Note, Autumn Leaves, Inc., Mohamad Khalil, Reservation Inn, Inc., d/b/a My Place, Robert Willnow, National Certified, Inc., and The Illinois Liquor Control Commission. Certain formal parties in the proceedings below, Walter S. Kozubowski, City Clerk of the City of Chicago, The Board of Election Commissioners of the City of Chicago, Ruth Kurt, Edwina Silverman, Jacqueline Gleason, and Vince Rossi, did not file briefs in the Illinois Supreme Court, and have been the subjects of a letter to the Clerk of this Court under Rule 10.4 of the Court.

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DENNIS BOBER, et al.,

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v.

WALGREEN COMPANY, et al.,

Appellees.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

Dennis Bober, *et al.*, the appellants, appeal from the final judgment of the Illinois Supreme Court, dated January 23, 1986, holding that the requirement of § 9-2 of the Illinois Liquor Control Act, *Ill.Rev.Stat.*, Ch. 43, ¶167 (1983), that the signatures of twenty-five per cent of the legal voters of a precinct are required on a petition to hold a local option election does not unconstitutionally burden voters' right to fair access to the ballot in violation of the First and Fourteenth Amendments to the Constitution of the United States, and of Equal Protection.

OPINIONS BELOW

The opinion of the Illinois Supreme Court, which appears in the appendix hereto, p. 1a, *infra*, is reported at 111 Ill.2d 120, 488 N.E.2d 980 (1986).

The Order, dated November 1, 1984, and the Memorandum Opinion of the Circuit Court of Cook County, Illinois, dated November 15, 1984, are not reported. They are reprinted in the appendix, p. 8a, *infra*.

JURISDICTION

The opinion of the Illinois Supreme Court, reversing the judgment entered by the Circuit Court of Cook County, was entered on January 23, 1986. No petition for rehearing was filed.

A Notice of appeal to this Court was timely filed in the Illinois Supreme Court on March 19, 1986.

This appeal is being docketed in this Court within 90 days from the entry of the final judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION,

AMENDMENT I:

> Congress shall make no law . . . abridging the freedom of speech, . . . or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

AMENDMENT XIV:

> Section 1. . . . No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of . . . liberty . . . without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Liquor Control Act, §9-2, *Ill. Rev. Stat.*, ch. 43, ¶167 (1983):

> When any legal voters of a precinct in any city . . . of more than 200,000 inhabitants . . . desire to pass upon the question of whether the sale at retail of alcoholic liquor shall be prohibited in the precinct, they shall . . . file . . . a petition . . . containing the signatures of not less than 25% of the legal voters . . . from the precinct.

HOW THE FEDERAL QUESTION WAS RAISED

The claims that the twenty-five percent signature level violated the guarantees of the United States Constitution were raised in the pleadings on which the Circuit Court of Cook County granted the judgment which was reversed by the Illinois Supreme Court. In particular, the trial court noted that the question advanced was whether the twenty-five per cent signature requirement "is so unduly burdensome on the rights of voters . . . that the requirement violates the first and fourteenth amendments of the United States Constitution." Memorandum Opinion of the Circuit Court of Cook County, Illinois, p. 9a, *infra*. The Circuit Court found the requirement did violate "First Amendment rights and also rights to equal protection under the Federal Constitution . . ., and struck the provision down. *Id.*, p. 15a. No independent basis from Illinois law was cited by the court for its decision.

The federal constitutional claims were reiterated before the Illinois Supreme Court, which held that "the signature requirements . . . did not deprive voters of equal protection nor impinge upon their first amendment rights. . . ." See opinion below, p. 7a, *infra*. The Illinois Supreme Court thus considered and expressly rejected the federal constitutional claims.

STATEMENT OF THE CASE

The appellants, Dennis Bober, *et al.*, are registered voters in precincts in Chicago, Illinois, who signed, circulated, and, on August 18, 1984, filed Petitions to hold referenda, known as "local option elections," on banning the retail sale of liquor in their neighborhoods. The governing statute for such elections, §9-2 of The Illinois Liquor Control Act, *Ill.Rev.Stat.*, Ch. 43, ¶167 (1983), requires that such petitions be signed by twenty-five percent of the legal voters residing in the precinct. Certain of the appellees challenged the petitions in the Circuit Court of Cook County, alleging that, after the withdrawal of the signatures of certain signers, the petitions failed to meet the twenty-five percent statutory requirement. The Circuit Court found that the petitions did not meet the statutory signature requirement, granted summary judgments on October 11 and 24, 1984, and ordered that the requested referenda not be held.

Subsequent to the Circuit Court's opinion, a Complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division, on October 29, 1984. The Complaint sought to have the provision of the Illinois Liquor Control Act that mandated the twenty-five percent signature requirement declared unconstitutional

on its face as violative of the guarantees of the First and Fourteenth Amendments of the United States Constitution. On October 31, a hearing was held before the Hon. Nicholas Bua, a judge of that court. At that hearing, the District Court, *sua sponte,* dismissed the Complaint, invoking the doctrine of abstention, and referred the parties to the Circuit Court of Cook County. Minute Order, p. 48a, *infra.*

In the Cook County Court, the presiding judge elected to take the Complaint filed in the District Court as a motion for reconsideration of his earlier orders of summary judgment. The appellants elected to fully press their federal constitutional claims in the state forum. After hearing the arguments of counsel, the Circuit Court entered an order vacating its previous orders, finding §9-2 of the Liquor Control Act violative of the First and Fourteenth Amendments to the United States Constitution and of Equal Protection, and ordering that the referenda be held. Order of Circuit Court of Cook County, Illinois, p. 47a. On November 6, 1984, the local option elections were held, and the voters of the precincts voted to prohibit the sale of alcoholic liquors in their precincts.

In the interim, appellees herein appealed the decision of the Circuit Court to the Illinois Supreme Court. That Court reversed and remanded, holding that any state regulation of a referendum election need only be rationally related to a permissible state purpose, and that the twenty-five percent signature requirement was so related to protecting the stability of the retail liquor sales industry. Opinion below, p. 6a.

THE QUESTION IS SUBSTANTIAL

When the Illinois Supreme Court ignored the holdings of this Court as to the proper mode of constitutional analysis to be employed when a state's elections regulations are challenged on federal constitutional grounds, it erroneously upheld the unduly burdensome twenty-five percent signature requirement in local option elections. The Illinois court chose to adopt an either-or "rational relationship or strict scrutiny" analysis. On the basis of that approach, it found the regulation passed muster as rationally related to a permissible state purpose.

In taking such an approach, the Illinois court chose to overlook the example of this Court and to adopt precisely the type of litmus-paper test that this Court scorned in *Storer* v. *Brown*, 415 U.S. 724 (1974), and in *Anderson* v. *Celebreeze*, 480 U.S. 780, 789 (1983). The Illinois court avoided engaging in the analysis that the *Anderson* Court prescribes for constitutional challenges to a state's election law: identifying the interests the complaining party seeks to vindicate, identifying and evaluating the state's interest in imposing its regulation, determining the strengths of those competing interests, and considering the extent to which the state's interests necessitate burdening the individual's rights. This mode of analysis is subtler and more difficult than a simple resort to dispositive categorizations. But the Illinois court refused to engage in that process. The Illinois Supreme Court's error in choosing its analytical mode led it to mistakenly reverse the trial court and uphold the state's burdensome ballot access requirement.

Engaging in the proper mode of analysis, that endorsed by this Court in *Anderson*, the impermissibility of Illinois' twenty-five per cent signature requirement becomes ap-

parent. As the trial court found, the requirement is so high as to be an "onerous burden" on appellants' attempts to secure a vote on a local option question p. 14a. The only interest advanced by the state, or by appellants below, in defense of the regulation is the state's interest in regulating the retail liquor industry. No justification has been advanced in terms of the state's power to provide for orderly elections, an uncrowded ballot, avoiding a multiplicity of issues, or the like. It is all but conceded that the state has no *electoral* rationale for its burdensome twenty-five percent signature requirement.

The test prescribed in *Anderson* is based on a First and Fourteenth Amendment analysis, but the test relies for authority and guidance upon earlier cases of this Court which rest on Equal Protection grounds. 460 U.S. at 786, n.7. So, too, the analysis in *Anderson* is something of a hybird, setting forth a standard of review more easily met than the "strict scrutiny" test sometimes applied when fundamental rights are implicated. However, the *Anderson* analysis, or any that follow from a similar rationale, demand a level of examination of a challenged regulation that is higher than the "rational relationship" approach. The right involved, access to the ballot, is too important to allow so minimal a standard to prevail.

In opting to review the challenged regulation by a rational relationship standard, the Illinois Supreme Court ignored what this Court said in *Illinois State Board of Elections* v. *Socialist Workers Party,* 440 U.S. 173, 184 (1979), "Restrictions on access to the ballot burden . . . fundamental rights." Instead, the Illinois court chose to interpret two cases of this Court that deal with referenda results, *Lockport* v. *Citizens for Community Action,* 430

U.S. 259 (1977), and *Gordon* v. *Lance,* 403 U.S. 1 (1971) as standing for the proposition that *no* fundamental Constitutional right attaches to ballot access when the election in question happens to be a referendum. Without analysis, the Illinois Court ignores, by "distinguishing," the cases of this Court which hold that First Amendment protections do attach to referenda: *Citizens Against Rent Control* v. *Berkeley,* 454 U.S. 290 (1981), and *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765 (1978). In those cases, this Court held that the First Amendment interests protected proponents and opponents of referenda as they did supporters and opponents of candidates as set forth in *Buckley* v. *Valeo,* 424 U.S. 1 (1976). In *Citizens Against Rent Control* in particular, the analysis of this Court makes it clear that the fact that the election involved is a referendum rather than a candidate election gives the state no additional license to burden the First Amendment rights of its citizens regarding an election.

In *Williams* v. *Rhodes,* 393 U.S. 23 (1968), this Court lists the rights that are implicated by restrictions on ballot access, calling them

> two different, although overlapping kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.

393 U.S. at 30. There is nothing in the nature of referenda that makes them, insofar as access to the ballot is concerned, less of an instrument for the exercise of the rights set forth in *Williams,* than candidate elections. These rights are, of course, grounded in the First Amendment, and are part of the liberty interests protected by

the Due Process Clause of the Fourteenth Amendment. *NAACP* v. *Alabama,* 357 U.S. 449 (1948). The fact that the subject matter of the local option elections is liquor does not alter any First Amendment analysis. As this Court made clear in *California* v. *La Rue,* 409 U.S. 109 (1972), a state may not use its powers under the Twenty-First Amendment to diminish the exercise of First Amendment rights by its citizens. Along parallel lines, in relation to the Establishment Clause of the First Amendment, the Court declared in *Larkin* v. *Gendel's Den, Inc.,* 459 U.S. 116, 122 n.5 (1982), "The State may not exercise its power under the Twenty-First Amendment in a way which impinges on the Establishment Clause of the First Amendment."

The Illinois Supreme Court made much of the fact that there is no constitutional right to referendum elections, using that as the basis for opting for a low standard of review, under which apparently any burden to ballot access is permissible. But as this Court noted in *Storer* v. *Brown,* 415 U.S. 724, 730 (1974), which upheld a five percent signature requirement in a candidate election, resolving challenges to election regulations is very much a matter of degree, involving "hard choices." The summary method of the Illinois court serves only to avoid making those choices, and to refuse to thoughtfully balance the competing interests of the state and its citizens. The methodology of that court should be rejected and its decision reversed.

Even if a state may properly have stricter ballot-access regulations for referenda than for candidate elections, or may set a higher signature requirement than would be permissible for a candidate election, there is no justification for the brutally high barrier of twenty-five percent

that Illinois erects to restrict, if not thwart, access to the ballot for local option elections. The Circuit Court of Cook County faced the hard choice of balancing the interests of the state and its citizens. The trial court's determination that a ten percent signature requirement served the interests of both the voters and the state was a carefully-reasoned exercise in judicial analysis and decision-making. The Order of the Circuit Court is a correct interpretation of the law as established by the cases of this Court.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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DANIEL P. MADDEN
Suite 401
109 North Dearborn Street
Chicago, Illinois 60602
(312) 853-0235
Counsel for Appellants

April, 1986

APPENDIX

Docket Nos. 60999, 61081 cons.—Agenda 22—September 1985.

WALGREEN COMPANY *et al.*, Appellants, v. THE ILLINOIS LIQUOR CONTROL COMMISSION *et al.* (The Illinois Liquor Control Commission *et al.*, Appellants; Dennis E. Bober *et al.*, Appellees).—LEWIS H. WINDON *et al.*, Appellants, v. RUTH KURT *et al.* (Walter S. Kozubowski, City Clerk, *et al.*, Appellants; Ruth Kurt *et al.*, Appellees).

JUSTICE GOLDENHERSH delivered the opinion of the court:

This is a direct appeal from the order and judgment of the circuit court of Cook County (94 Ill. 2d R. 302(a).) Plaintiffs, retail liquor licensees, filed separate actions to challenge the validity of petitions gathered to initiate local-option referenda pursuant to section 9—2 of the Liquor Control Act of 1934 (Ill. Rev. Stat. 1983, ch. 43, par. 167) on the question of whether the sale of alcoholic liquor should be banned in three precincts of the city of Chicago. Named as defendant were Walter S. Kozubowski, city clerk, and the board of election commissioners of the city of Chicago. The circuit court entered summary judgments in favor of plaintiffs. Intervening defendants, appellees here, filed a complaint in the District Court of the United States for the Northern District of Illinois for injunctive, declaratory and other relief seeking a declaration that section 9—2 of the Liquor Control Act was unconstitutional. Under the doctrine of abstention the district court declined to act and the cause was transferred to the circuit court. Although the record does not contain orders granting leave to itervene to all of the intervenors, the parties have not questioned the standing of any of the intervenors.

Section 9—2 in pertinent part provides:

> "When any legal voters of a precinct in any city, village or incorporated town of more than 200,000 inhabitants, as determined by the last preceding Federal census, desire to pass upon the question of whether the sale at retail of alcoholic liquor shall be prohibited in the precinct, they shall, at least 90 days before an election, file in the office of the clerk of such city, village or incorporated town, a petition directed to the clerk, containing the signatures of not less than 25% of the legal voters registered with the board of election commissioners or county clerk, as the case may be, from the precinct. * * *"

On November 1, 1984, the circuit court entered an order in which it vacated the prior orders for summary judgment entered in favor of plaintiffs; declared the 25% requirement of section 9—2 unconstitutional; found that the 10% requirement contained in section 28—6 of the Election Code (Ill. Rev. Stat., 1984 Supp., ch. 46, par. 28—6) applied; and ordered the board of election commissioners if it determined, pursuant to section 28—6 of the Election Code, that the petitions were signed by 10% of the registered voters of the respective precincts, to certify for placement on the November 6, 1984, ballot the local-option questions.

On November 2, 1984, plaintiffs filed their notices of appeal to this court, an emergency petition to vacate and/or reverse the circuit court's order of November 1, 1984, and a motion to stay the force and effect of that order. We denied the motion for stay, the local-option question was placed on the ballots of the precincts, and the voters in each of the precincts voted to prohibit the retail sale of alcoholic liquor. Plaintiffs filed with this court their motion to stay the force and effect of the results of the November 6, 1984, election, and to permit them to remain in operation pending the final disposition of their appeal. We

allowed that motion on December 5, 1984. By order of the circuit court several of the causes were consolidated for purposes of appeal, and this court on its own motion consolidated all of the causes.

Section 28—1 of the Election Code in pertinent part provides that questions of public policy which have legal effect shall be submitted to referendum only as authorized by the statute which so provides or by the Constitution. (Ill. Rev. Stat. 1983, ch. 46, par. 28—1.) It further provides that when a statute authorizes the initiation of a public question by a petition of electors the provisions of such statute shall govern with respect to the number of signatures required, the qualifications of persons entitled to sign the petition, the contents of the petition, the officer with whom the petition must be filed, and the form of the question to be submitted. If such statute does not specify any of the foregoing petition requirements, the corresponding petition requirements of section 28—6 shall govern such petition.

Because appellants are plaintiffs, defendants, and an intervening defendant, and the intervening defendants are the appellees, further discussion of the issues will refer to appellants and appellees rather than plaintiffs and defendants.

Appellants contend first that the States, through the twenty-first amendment to the Constitution of the United States, "have a broad right to prohibit or regulate traffic in intoxicating liquor as a valid exercise of their police power." In the exercise of this power the States are vested with wide discretion "subject to minimal demands of the fourteenth amendment's due process and equal protection requirements." They argue that a litigant who challenges the constitutionality of a State's regulation of the liquor industry bears a heavy burden of persuasion and his objection cannot be sustained "unless the objectors demonstrate that the law in question is completely arbitrary and irrational." They assert that since the provisions of sec-

tion 9—2 of the Liquor Control Act relate exclusively to the liquor industry, its validity must be determined under the foregoing rule.

Appellants contend that the circuit court erred in holding that the 25% signature requirement violated the equal protection clause of the fourteenth amendment to the United States Constitution. They argue that the validity of referenda procedures must be determined by the rational-basis test, which requires only that the classification bear a "rational relationship to a legitimate governmental interest, not whether it is overly broad." (*Kalodimos* v. *Village of Morton Grove* (1984, 103 Ill. 2d 483, 509.) Appellants argue that the 25% requirement does not improperly interfere with the voters' right to vote, or of any other rights guaranteed them by the first amendment to the United States Constitution. They contend further that the circuit court erred in holding the 10% signature provision of section 28—6 of the Election Code applicable for the reason that a referendum authorized by section 9—2 of the Liquor Control Act is not within the scope of section 28—6.

Appellees contend that section 9—2 "unduly burdens access to the ballot in a referendum and must be examined with heightened scrutiny," rather than the minimum rationality test proposed by appellants. (*Williams* v. *Rhodes* (1968), 393 U.S. 23, 30-31, 21 L. Ed. 2d 24, 31, 89 S. Ct. 5, 10.) Citing *Anderson* v. *Celebrezze* (1983), 460 US. 780, 789, 75 L. Ed. 2d 547, 558, 103 S. Ct. 1564, 1570, appellees assert that a constitutional challenge to the validity of a State election statute requires that the court examine the character and magnitude of the injury resulting from the State action to the rights protected by the first and fourteenth amendments and the legitimacy and strength of the State's justifications for imposing the burden, and determine whether the State requires such a heavy burden to vindicate its interests. Appellees assert that the 25% petition requirement places too heavy a burden upon the voters, and violates the voters' first amendment rights because it prevents the voters from effectively associating with their fellow precinct residents.

We consider first whether the requirement of section 9—2 that the petitions be signed by 25% of the legal voters is violative of the equal protection clause of the fourteenth amendment or the first amendment to the United States Constitution.

We have examined the authorities cited by appellees and conclude that they are distinguishable from the situation here. Those cases involved access to the ballot by distinct political parties (*Anderson* v. *Celebrezze* (1983), 460 U.S. 780, 75 L. Ed. 2d 547, 103 S. Ct. 1564; *Illinois State Board of Elections* v. *Socialist Workers Party* (1979), 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983); voters' first amendment rights to freedom of speech to advertise in support of or opposition to a referendum (*First National Bank* v. *Bellotti* (1978), 435 U.S. 765, 55 L. Ed. 2d 707, 98 S. Ct. 1407); and voters' first amendment rights of association with a political party and political expression to contribute funds in support of or opposition to a referendum (*Citizens Against Rent Control* v. *City of Berkeley* (1981), 454 U.S. 290, 70 L. Ed. 2d 492, 102 S. Ct. 434; *Buckley* v. *Valeo* (1976), 424 U. S. 1, 46 L. Ed. 2d 659, 96 S. Ct. 612).

In *Town of Lockport* v. *Citizens for Community Action* (1977), 430 U.S. 259, 51 L. Ed. 2d 313, 97 S. Ct. 1047, the Supreme Court held valid a New York statute which provided that the effectuation of certain changes in county government required that in a referendum the proposed change be approved by both a majority of the voters in the cities in the county, considered as a unit, and a majority of the voters of the county outside the cities. The court said:

> "The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a 'single-shot' referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their

representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives—instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters." (430 U.S. 264, 266, 51 L. Ed. 2d 313, 321, 97 S. Ct. 1047, 1052.)

See also *Howlette* v. *City of Richmond* (E.D. Va. 1978), 485 F. Supp. 17, 27, *aff'd per curiam* (4th Cir. 1978), 580 F.2d 704 (interpreting *Lockport* to hold that, because the right to obtain or vote in a referendum is not fundamental, a compelling-State-interest analysis may be inappropriate in analyzing equal protection challenges to referendum procedures).

In *Spaulding* v. *Illinois Community College Board* (1976), 64 Ill. 2d 449 this court held that there was no constitutional right to a referendum in connection with the formation of a new community college district although the relevant statute provided for a referendum when territory was being annexed to a district. The court said that the right to vote in referendum was "purely a permissive one bestowed by the legislature." (64 Ill. 2d 449, 456.) We conclude that consistent with the foregoing authorities, since neither a fundamental right nor a suspect class was involved, the statute need only bear a rational relationship to the ends sought to be achieved by the State or to promote the interest the State has in this area. The State has a strong interest in maintaining the economic stability of a legally authorized industry and protecting the licensed purveyors of its products from irrational and capricious changes in the wet/dry status of their precincts every four years. There is no question that the General Assembly could have required that approval of local option prohibition of the retail sale of alcoholic liquors required a majority of 60% or more. (*Gordon* v. *Lance* (1971), 403 U.S. 1, 29 L. Ed. 2d 273, 91 S. Ct. 1889.) As this court observed in *Garcia* v. *Tully* (1978), 72 Ill. 2d 1, 10, "Whether the course chosen by the General Assembly to achieve a de-

sired result is either wise or the best means available is not a proper subject of judicial inquiry."

We hold that the signature requirements of section 9—2 of the Liquor Control Act did not deprive voters of equal protection nor impinge upon their first amendment rights to contribute funds, advertise, or associate with other voters in support of a referendum.

In view of the conclusion reached, we do not consider the question whether the provisions of section 28—6 of the Election Code can apply to a referendum authorized by section 9—2 of the Liquor Control Act.

For the reasons stated, the judgment of the circuit court is reversed and the cause is remanded to the circuit court with directions to enter judgment holding the petitions and referenda invalid.

Reversed and remanded, with directions.

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — COUNTY DIVISION

WALGREEN COMPANY, and KLASS BRAKE, INC., Plaintiffs	)	
v	)	No. 84 Co 209
WALTER S. KOZUBOWSKI, CITY CLERK OF THE CITY OF CHICAGO, AND THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, Defendants	)	
and	)	
LOUISE SHOWMAN d/b/a HIDEAWAY LOUNGE, Plaintiff	)	
v	)	No. 84 Co 218
WALTER S. KOZUBOWSKI, CITY CLERK OF THE CITY OF CHICAGO, AND THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, Defendants	)	

MEMORANDUM OPINION

This matter is before this court to determine the constitutionality of the requirement that the signatures of twenty-five percent (25%) of the registered voters of a precinct are necessary to place before the voters of a precinct the question of whether the sale of alcoholic beverages shall be prohibited in that precinct. These cases have a fragmented procedural history. The attorneys for the plaintiffs and the Corporation Counsel, as attorney for the City Clerk, stipulated as to the facts and agreed that the local option question could not be placed on the ballot for the 41st and 11th precincts of the 46th Ward, because of the failure of those circulating the petitions to obtain the requisite twenty-five percent (25%)

valid signatures. The court entered judgment for the plaintiffs.

The question of the constitutionality of the twenty-five percent (25%) was not raised in the pleadings, briefs or proceedings before this court. Certain voters, who had signed petitions in the precincts, brought an action on October 29, 1984, in the United States District Court contesting the constitutionality of the twenty-five percent (25%) requirement. On October 31, 1984, Judge Nicholas Bua of the United States District Court directed the parties to return to the state court on the grounds of the Federal judicial policy of abstention, which require the federal courts to permit the state court to decide issues of predominately state concern. This matter is back before this court, within term time, on intervenor-voters' motion for this court to reconsider its order removing the local option question from the ballot in the 41st and 11th precincts of the 46th Ward.

In order to expeditiously adjudicate this matter in light of the imminent election on November 6, 1984, this court granted leave for the intervenor-voters and the Illinois Liquor Control Commission, by the Attorney General, to intervene in this matter and for the pleadings and memoranda filed in the United States District Court to be filed in this proceeding. Thus, the posture of this case is that the intervenor-voters, as respondents, are asking this court to vacate its order and to rule that the twenty-five percent (25%) requirement is unconstitutional.

Two arguments are advanced to have this court declare the twenty-five percent (25%) requirement invalid and to use some lesser percentage in its stead:

1) That §28-6 of the Election Code, Ill.Rev.Stat., Ch. 46, governs the percentage of signatures necessary to place the local option question on the ballot.

2) That the twenty-five percent (25%) requirement is so unduly burdensome on the right of voters to place such questions on the ballot that the requirement violates the first and fourteenth amendments of the United States Constitution.

Illinois Revised Statutes, Chapter 46, §28-1 provides that §28-6 only applies where the statute authorizing the public question is silent on the method of initiation and submission of the question. The Liquor Control Act expressly requires the signatures of twenty-five percent of the registered voters of the precinct. These Election Code provisions would not have even been considered in the context of local option propositions, except that the intervenor-voters now argue that the provisions of the Liquor Control Act are not dispositive because the twenty-five percent (25%) requirement under that Act is void on constitutional grounds.

The basis for the constitutional challenge is that petition provisions are unduly burdensome, and, therefore, deny access to the ballot in violation of the First amendment of the U.S. Constitution and also violate the Equal Protection clause of the U.S. Constitution. The rule fashioned by the United States Supreme Court to pass on constitutional challenges to specific provisions of election laws "provides no litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection clause." *Storer* v. *Brown,* 415 U.S. 714, 730 (1974). "Decision in this context, as in others, is very much a matter of degree, very much a matter of considering the facts and the circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Id.* The State has an important interest in regulating access to the ballot by requiring some preliminary showing of a significant modicum of support before placing a proposition before the voters; the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election. *Jenness* v. *Fortson,* 403 U.S. 431, 442 (1971). The constitutionality of the twenty-five percent requirement must be tested in light of these factors.

The Illinois Liquor Control Act specifically provides that the "Act shall be liberally construed, to the end that health, safety and welfare of the people of the State of

Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by the sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors." Ill. Rev. Stat. Ch. 43, §94 (1982). The legislature through the local option election provisions has permitted voters to determine one aspect of the control of the sale of alcoholic liquor, that is — whether any shall be sold at all within the relevant precinct. The State's expressed interest, then, is to permit the local voters to decide. The intervenor-voters here are contending that the State, while permitting the voters to decide, is making access to the ballot unduly burdensome.

The challengers of the twenty-five percent (25%) requirement have suggested various ways in which the requirement is unduly burdensome. The number of the legally registered voters in a precinct required to sign the petition is onerous, because the challenge process results in many signatures being stricken on legal grounds, so that petitioners may be required to obtain a much higher percentage of the registered voters to obtain a sufficient number of valid signatures. This is irrelevant since the principle that the signatures must be valid applies to all petitions filed to hold a referendum.

Unlike other petition processes in this state, however, the Illinois Liquor Control Act permits persons to revoke their signatures after the filing of the petitions, so that once having obtained an otherwise sufficient number of valid signatures to place the question before the voters, the opponents can effectively block this effort by securing enough revocations. The twenty-five percent (25%) requirement is not then twenty-five percent (25%) as in the sense of other petitions, but, in essence, the proponents circulating petitions must secure more than twenty-five percent (25%) of the required valid signatures in order to insure ballot access. While the twenty-five percent (25%) requirement alone is of questionable constitutional validity, the revocation provision makes the twenty-five percent (25%) requirement a chimera, an elusive creature

that only those who wish to vote their area dry or wet are required to catch.

In examining the statistics surrounding the petitions the unduly burdensome requirements of Chapter 43, Section 167 becomes evident. In the 11th Precinct the February 1984 poll sheet had 678 voters. Total signature needed for twenty-five percent (25%) of 678 was 170. Total signatures obtained was 204 or thirty percent (30%) of the registered voters on the poll sheet. The parties opposing the petition obtained 35 revocations after the filing of the petition. By this unique provision of the statute the valid signatures were reduced to 169 or one below the statutory requirement.

In the 41st Precinct the February 1984 poll sheet had 702 [sic] voters. Signatures needed for twenty-five percent (25%) of 792 was 198. Total signatures obtained was 213 or 26.8% of the registered voters on the poll sheet. The parties opposing the petition obtained 16 revocations after the filing of the petition. The valid signatures were thereby reduced to 197 or one signature below the statutory requirement. In reality the petitioners will always have to obtain substantially more than twenty-five percent (25%) in order to insure against the possibility of an unknown number of revocations.

A local option referendum in Illinois is a right established by the legislature and is not recognized as a fundamental constitutional right. However, once that right was given to the voters, it must be carried out in a constitutional manner. The twenty-five percent (25%) restriction is unconstitutional.

Those who support the twenty-five percent (25%) requirement contend that local option questions have been consistently voted within this state and many areas have both voted themselves dry and wet which proves that the twenty-five percent (25%) requirement is not unduly burdensome. That merely begs the question. The focus must not be on whether it is possible or impossible to gather the required signatures, but whether the requirement is unduly burdensome.

Counsel for the plaintiff-licensees has asserted that the Liquor Control Act recognizes that those wishing to vote a precinct dry must bear the necessary burden of twenty-five percent (25%) before those having the privilege of selling liquor and who have gone to great expense to establish their businesses will lose that privilege. This possibility, however, must be balanced against the power of the people to express their will by referenda, which has been described by the United States Supreme Court as our "devotion to democracy". *James* v. *Valtierra,* 402 U.S. 137, 28 L.Ed. 678, 682 (1971).

Counsel for the plaintiff-licensees has eloquently argued the historical development of the statutory scheme in Illinois after the passage of the twenty-first amendment to the United States Constitution. The Illinois statutory scheme allows the electorate to exercise its will within a precinct.

There is no question that the Illinois Liquor Control Act creates a tension between the licensee who makes an economic investment in the privilege to sell alcoholic liquors and the right of the legal voters in a precinct to vote that precinct dry. There is also no question, however, that the courts have consistently upheld the right of voters to exercise this prerogative to forbid the sale of alcoholic liquor in their precinct. *See Duncan* v. *Marcin,* 82 Ill.App.3d 963 (1980); *Malito* v. *Marcin,* 14 Ill.App.3d 658 (1973). Having granted to the voters the right to decide this question at a public referenda, the only question for this court to decide is whether the state in granting this right has placed an undue burden on its exercise.

The State has established different classifications for those who wish to place on the ballot questions pertaining to the sale of alcoholic liquors and those who wish to place on the ballot questions pertaining to other matters. Typical of the matters that the voters may place on the ballot are advisory referenda as permitted under Section 28-6 of the Election Code and those arising under Article VIII of the Illinois Constitution pertaining to local gov-

ernment. Ill. Rev. Stat. ch. 46, §§28-6, 7 (1984). To place such questions on the ballot, petitioners are required to obtain signatures of only ten percent (10%) of the registered voters in the appropriate political unit, and there are not any provisions concerning the revocations of the signatures of those who have signed these petitions. *Id.*

This court repeatedly asked the parties during oral argument if they knew of any other statute in Illinois that had a signature requirement of twenty-five percent (25%) or more for a petition for a binding referendum. No one at that time was able to cite any other statute with a similar percentage requirement and a revocation provision.

Since the oral arguments the court has reviewed the hundreds of Illinois statutory provisions for referenda and with a few exceptions all require less than twenty-five percent (25%) and none have a revocation provision. The few that have higher percentage requirements relate to extraordinary actions. A listing of the statutory provisions is attached to this memorandum as Appendix I.

In determining whether a given legislative classification denies a person the equal protection of the law, where the person is neither a member of a suspect class, nor has been deprived of a fundamental right, the court is restricted to determining whether the particular legislative classification is rationally designed to further a legitimate state purpose. *See In Re Estate of Karas*, 61 Ill. 2d 40, 47-48 (1975).

Given that the State's expressed policy is to permit the voters of a precinct to decide if alcoholic liquors shall be sold in a precinct, the onerous burden that is placed on petitioners to place that question on the ballot bears no rational relation to that interest. Even considering the State's interest in limiting ballot access, the fact that other questions can be placed more easily on the ballot strongly weighs against the burden that has been placed on those who wish to place this question

on the ballot. Further, the additional burden that is imposed by the revocation provisions merely highlights the impossibility of the task and the irrationality of the twenty-five percent (25%) requirement. That this question is decided at the precinct level does not reduce the interest that these voters have in placing the question on the ballot. The twenty-five percent (25%) requirement bears no rational relation to a legitimate state purpose.

In conclusion, THE COURT FINDS:

1. As defined in Ch. 46, Ill. Rev. Stat., Sec. 1-3(14) "public question" means any question, proposition or measure submitted to the voters at an election dealing with subject matter other than the nomination or election of candidates . . . ."

2. Petitions to submit a question to the voters in a precinct of whether to prohibit the retail sale of alcoholic liquor (hereinafter and commonly referred to as "local option") is clearly a species of "public question".

3. The Illinois Liquor Control Act., Ill.Rev.Stat., Ch. 43, Sec.9-2, establishes a disparate signature requirement for local option petitions when compared to the ten percent (10%) signature requirement for advisory public questions, Ill. Rev. Stat., Ch.46 sec. 28-6, and binding public questions authorized by sec.28-7 of the Election Code and the hundreds of other statutory provisions.

4. The excessive signature requirement imposed on intervening defendants is unconstitutional as violative of the equal protection clause for two distinct reasons. First, it violates their First Amendment rights and also rights to equal protection under the Federal Constitution because it arbitrarily imposes a more severe requirement (one hundred fifty percent more than most other public questions) on placing local option questions on the ballot than for any other public question. *Williams* v. *Rhodes*, 393 U.S. 23 (1968) (15% requirement for new party unconstitutional); *McLain* v. *Meier*, 637 F.2d 1159 (8th Cir. 1980) (3.3% requirement for new party unconstitutional);

Greaves v. *State Board of Elections*, 508 F.Supp. 78 (E.D.N.C.1980) (10% requirement for independent candidate unconstitutional); *American Party* v. *Jernigan*, 424 F. Supp.943 (E.D. Ark.,1977) (7% requirement for new parties unconstitutional); *Lendall* v. *Jernigan*, 424 F. Supp. 951 (E.D. Ark., 1977) (10% requirement for independent party unconstitutional); *Socialist Labor Party* v. *Rhodes*, 318 F.Supp. 1262 (S.D. Ohio 1970) (7% requirement for new party unconstitutional).

Second, it establishes a higher signature requirement in a smaller geographic area (25% in a precinct) than the signature requirement in a larger area (10% city-wide for other questions of public policy) thus violating the standards for ballot access enunciated by the U.S. Supreme Court in *Illinois State Board of Election* v. *Socialist Workers Party*, 440 U.S. 173 (1979).

For these reasons, THIS COURT FINDS that the twenty-five percent (25%) requirement contained in Section 168 and 169 of the Liquor Control Act is unconstitutional. Although this ruling leaves the Act without a signature requirement, this court does not have to decide what a reasonable signature requirement would be to place this proposition on the ballot. Section 28 of the Election Code provides that where the statute authorizes the placement of public questions on the ballot is silent as to the form and sufficiency of petitions, the requirements of Section 28 shall control.

This section requires that ten percent (10%) of the registered voters of the political subdivision are necessary to place the question on the ballot.

Therefore, a factual determination will have to be made to determine whether the petitions contain the requisite valid signatures of ten percent (10%) of the registered voters of the precincts in question.

JOSEPH SCHNEIDER
Nov. 15, 1984

November 15, 1984

APPENDIX

(Minimum signature requirements)

Chapter 5 — Agriculture and Horticulture

Marketing Program Referendums — to place proposition on ballot

Apple & Peach Marketing Programs

§356 Proposal or Adoption
20% or 100 producers, whichever is less

§363 Continuation or termination of programs
20% or 100, whichever is less, of affected producers

§365 Vacancies on Program Operating Board
Additional candidates — 25 signatures of producers

Egg Marketing Programs

§506 same as §356, except "or 200"

§513 same as §363, except "or 200"

§515 Vacancies on Egg Marketing Development Council Additional Candidates — 25% of producers or 25 signatures, whichever is less

Soybean Marketing Programs

§556 Proposal or adoption of programs
2500 producers with 10 signers from each of fifty counties

§561 Term of program
5 year term with year to year extension, unless petition signed by 2% of producers

§563 Marketing Board Candidates
250 or 5%, whichever is less, of qualified producers in district

Corn Marketing Programs

§707	To call referendum on program disapproved by Marketing Board — 2,500 producers with 10 from each of 50 counties
§712	Marketing Board Candidates lesser of 200 or 5% of qualified producers in district

Sheep and Wool Production Marketing Board

§1057	same as §707, except 400 producers with 5 from each of 25 counties
§1060	same as §561, except 400 producers with 5 from each of 25 counties
§1062	Marketing Board Candidates 50 signatures of qualified producers in district

Chapter 15½ — Aviation — Referendums

§68.2	To create Airport Authority Petition signed by 500 persons in proposed territory
§68.9a	Annexation of contiguous territory to district petition for referendum by 10% of landowners in affected territory or, if unoccupied, 10% of landowners and 10% of electors in affected territory
§68.17	Authority may be dissolved by ordinance, but if petition by 500 electors, proposition put to vote
§85	to levy taxes for establishment and maintenance of airport in counties of less than 1,000,000 by petition of 100 voters
§160	if refusal of County Board to approve levy requested by County Airport Commission issue put before voters if petition presented signed by 10% of voters of county

Chapter 19 Canals and Waterways

Annexation of additional territory to Port Districts

§211 to Waukegan Port District
5% of legal voters within limits of proposed addition

§282 to Joliet Regional Port District
ditto

§316 to Tri-City Regional
ditto

§383 to Seneca Regional
ditto

§433 Shawneetown Regional
ditto

§487 Southwest Regional
ditto

§737 Mount Carmel Regional
ditto

§882 Jackson-Union County Regional
ditto

Disconnection from Illinois Valley Regional Port District

§803.1 disconnection of township
5% of legal voters in township to be disconnected

Chapter 21 — Cemeteries

To establish and maintain Public Graveyards

§14b 50 legal voters of township under 100,000

To levy tax to maintain neglected graves and cemeteries

§62b petition of 100 voters in county

§62d to discontinue restoration petition of 100 voters in county

To create Cemetery Maintenance District

§64.24a 50 or more voters within limits of proposed district or majority of voters if less than 100 voters in proposed district

Chapter 23 - Charities and Public Welfare

Hospital Districts

§1255 to create on petition of 2500 or 10%, whichever greater, within proposed district
district cannot be less than 25,000, unless district contains entire county, than no less than 15,000

§1260 annexation or disconnection of territory
10% or 50 voters, whichever is fewer, of proposed area

§1275 dissolution after ordinance by governing board put to vote on petition of 1000 or 10%, whichever is lower

Tuberculosis Sanitarium District

§1701 organization of district
100 legal voters within proposed district

County Detention Homes, counties less than 300,000

§2686 to adopt act
lesser of 25% of voters at last general election or 1000 voters

§2687 to abandon act
ditto

Chapter 24 - Cities and Villages

§2-3-1 Incorporation of town as village
30 electors of incorporated town

§2-3-5 incorporation of village in counties of less than 150,000
35 electors within area containing at least 200 inhabitants with consent of municipality within 1-½ miles if area contains less than 7,500 residents

§2-3-5a incorporation of villages in counties greater than 150,000
250 electors in area containing at least 2500 inhabitants with consent as in 2-3-5

§2-3-9 City change to village
25% of registered voters

§2-3-10 incorporation of part of village or incorporated town
50 electors in proposed territory or 10% if greater than 500 electors

§2-4-1 to change name of municipality
at least one-half of those who voted for officers therein in at last election

§3-2-8.1 to fill vacancies in municipal offices
at least 100 legal voters or 10% of legal voters, whichever is less

§3-2-9 to reduce terms of elective office in municipalities of less than 500,000 - petition signed by electors not less than 10% of votes cast at last election for mayor or president of municipality

§3-2-9.1 to lengthen term of elective offices
ditto

§3-4-7 to restrict total of alderman to one-half authorized total in municipalities of less than than 100,000 inhabitants by electors numbering not less than 10% of the total vote cast at last election for mayor

§3-5-3i to require village candidates to run in primary elections
electors of village equal to 10% of number of votes cast for president at the last preceding general municipal election

§3-5-3j to discontinue primary elections in a village.
ditto

§3-5-6	to submit to voters whether village trustees shall run from districts 3% of electors of village with 25,000 or more population
§3-5-8	abandonment of district elections not less than 5% of electors of village
§4-2-2	adoption of commission form of government electors equal to 10% of votes cast for all candidates for mayor or president at the last preceding municipal election for such officer
§4-3-19	to require commissioner candidates to run for specific office electors equal to 10% of votes cast for candidates for mayor in last preceding quadrennial municipal election
§4-3-20	to require candidates to run without designation of office ditto
§4-10-1	abandonment of commission form of government electors equal to 25% of number of votes cast for all candidates for mayor in last preceding quadrennial municipal election
§5-1-5	adoption of managerial form of government electors equal to 1/10 of votes cast for all candidates for mayor or president in last municipal election
§5-2-3	to restrict number of aldermen to one-half authorized ditto
§5-2-3.1	staggering terms of office of aldermen electors of municipality equal to 10% of total vote cast at preceding municipal election for mayor
§5-2-18	change to aldermanic council after adoption of Manager Act

§5-2-18.1	change to election of council at large
§5-2-18.2	change to part at large and part from districts ditto
§5-2-18.7	change to election part at large and part from districts and staggered terms ditto
§5-5-1	abandonment of managerial form ditto
§6-2-2	adoption of strong mayor form of government electors equal to 1/10 of votes cast for all candidates for mayor at last preceding municipal election
§7-1-2	annexation of territory to municipality if corporate authorities reject annexation or do not order referendum, then on petition of electors of municipality equal to 10% of entire vote cast for mayor at last election
§7-1-16	annexation of municipality to another 10% of electors of municipality sought to be annexed who voted at last municipal election or 250 electors, whichever is less
§7-1-27	disconnection of territory 100 of electors of proposed territory
§7-6-1	dissolution of municipality electors equal to a majority of total vote cast at the last preceding general municipal election
§8-3-7a	submission of proposition to levy tax to provide public transportation for elderly and handicapped at least 1,000 or 10% of registered voters, whichever is less, residing in municipality of less than 500,000
§8-5-15	to incur additional indebtedness for water supply purposes in city or village having population of less than 500,000—electors equal to not less than

10% of votes cast for all candidates for mayor at last preceding general municipal election

§10-2.1-27 adoption of appointed Board of Fire and Police Comm'rs
electors of any municipality of less than 5,000 equal to 20% of legal votes cast at the last preceding general municipal election

§10-3-7 adoption of act to limit hours, wages and working conditions of firemen and policemen
electors equal to 5% of number of legal votes cast at last preceding general municipal election

§10-5-6 adoption of provisions for insurance for volunteer firemen
electors equal to 10% of legal votes cast

§11-17-2 levy for creation of health board in municipality from 100,000 to 200,000
100 electors of specified municipality

§11-17-9 discontinuance of board
20% of electors of municipality

§11-18-3 appointment of community nurses in municipalities of from 5,000 to 100,000
100 electors of specified municipality

§11-23-1 establishment of public hospital
100 electors of municipality of less than 100,000

§11-29-2 to levy tax to establish and maintain program for tuberculosis treatment and care in cities and villages under 500,000
100 electors of city or village

§11-45-1 levy for maintenance of municipal band or conduct of cultural programs in municipalities of less than 500,000
electors equal to 5% of number of votes cast at last preceding general municipal election

§11-63-2 to levy a tax to operate and maintain community buildings and gymnasiums
electors of any specified municipality equal to 5% of the votes cast at the last preceding regular municipal election

§11-63-3 to issue bonds for the acquisitions or construction of community buildings or gymnasiums
ditto

§11-66-2 to establish and maintain a municipal coliseum in cities and villages of less than 500,000 and levy tax to support
100 electors of specified municipality

§11-67-1 To establish and maintain a coliseum in municipalities of 75,000 or less
electors equal to 5% of the votes cast at the preceding general municipal election.

§11-68-2 to acquire and maintain a stadium and athletic field in municipalities of more than 30,000 whose limits coincide with the township in which the city is located
100 electors

§11-68-5 to issue bonds to acquire or improve a stadium and athletic field for the city
100 electors

§11-76-1.4 to require voter approval of an ordinance passed to purchase or lease real or personal property by municipality of less than 500,000 electors equal to 5% of the votes cast at the last preceding general municipal election

§11-92-8 to require voters approval of any ordinance passed to enter into trust agreement to secure payment of bonds authorized to establish and maintain recreational harbor facilities in municipalities of less than 500,000 electors equal to 5% of the votes

cast at the last preceding general municipal election

§11-95-7 to establish, maintain, and conduct a supervised recreational system and to levy a tax to support 10% of the electors of any municipality of less than 500,000

§11-95-14 to establish and maintain a joint recreational program for the handicapped between two or more municipalities and to levy a tax to support
electors equal to 5% of the number of votes cast for mayor in the last preceding general municipal election but not less than 300 electors of the municipality asking that the question of levying and collecting the tax be submitted to the electors

§11-98-2 to establish and maintain public parks and to levy a tax to support in municipalities of less than 85,000 in any city or village with a population greater than 500 but not more than 50,000, electors equal to 1% of the votes cast at the last preceding general municipal election, but in any case, not less than 100

§11-137-2 to require voter approval of any ordinance passed to purchase or lease a waterworks or sewerage system
electors equal to 20% of the votes cast at the preceding general municipal election

§11-141-4 to approve any ordinance to improve or construct a municipal sewerage system
electors equal to 15% of the votes cast for mayor at the last preceding municipal election

Chapter 34 — Counties

§51	to transfer territory from one county to another a majority of the electors residing upon any territory, not less than half of a congressional township
§151	to unite counties any number of legal voters, not less than 200, one-half of such number being freeholders
§203	to remove a county seat from its present location to some other point in the county legal voters who are not resident in the place where the county seat is located equal in number to 40% of the votes cast at the last preceding presidential election
§705	to establish the county executive form of government in the county 2% of the registered voters in the county or 500 individuals, whichever is less
§2155	to require voter approval of a resolution passed to levy tax for the provision of offices for county government in counties of less than 80,000 5% of the registered voters of the county
§2158	to require voter approval of bonds to construct a county jail and sheriff's residence in counties having more than 80,000 but less than 500,000 population 10% of the legal voters who voted at the last general election in the county
§2160.7	to issue bonds to construct a county jailhouse in counties of more than 500,000 but less than 1,000,000 5% of the legal voters who voted at the last general election in the county

§2178	to issue bond to construct a county courthouse in counties of more than 200,000 but less than 1,000,000 5% of the voters who voted at the last general election
§2442	to levy a tax for the purpose of creating and maintaining a fund for county fair purposes 100 taxpayers of the county
§5103	to levy a tax to establish and maintain a county tuberculosis sanitarium 100 legal voters of the county
§5115	to discontinue the sanitarium levy 5% of the registered voters in each of 2/3 of the townships or road districts in the county
§5120	to issue bonds for a sanitarium 3% of the legal voters of the county
§5125	to levy a tax to provide are for tuberulosis afflicted 100 legal voters
§5131	to discontinue the levy for care of persons afflicted with tuberculosis 5% of the legal voters in each of 2/3 of the townships or road districts of the county
§5134	to levy an additional tax for the care of persons afflicted with tuberculosis 100 legal voters
§5313	to provide for the care and treatment of persons afflicted with cancer or tumor 200 legal voters
§5314	to discontinue such care 200 legal voters

§5353 to discontinue tax levied to maintain non-sectarian hospitals in the county
100 legal voters

Chapter 37 - Courts

§707-2 to levy a child welfare tax to fund programs for children placed in foster homes or institutions pursuant to court order
5% of the legal voters of counties of less than 1,000,000 voters

Chapter 42 - Drainage

§3-26 to organize a drainage district
10% of the adult owners who own at least 20% of the land of the proposed district

§247 to organize a sanitary district in an area of not less than 3500 inhabitants, subject to river overflow
300 legal voters resident within the proposed area

§277 to organize a sanitary district utilizing Lake Michigan
300 legal voters resident within the proposed district (multiple cities or villages)

§296.6 to add contiguous territory to a sanitary district
10% of the legal voters resident within the proposed addition

§296.7 to disconnect contiguous territory from a sanitary district
10% of the legal voters resident in the territory sought to be disconnected

§299 to organize a sanitary district, multiple cities
100 legal voters resident within the proposed district

§315.2 to acquire, purchase or construct a waterworks and to issue bonds
10% of the legal voters of the sanitary district

§317e	to annex territory to a sanitary district 10% of the legal voters within the proposed addition
§317f	to disconnect territory from a sanitary district
§383	to organize a river conservancy district 1% of the legal voters resident within the area of the proposed district
§385	to add territory to a river district 1% of the legal voters within the proposed addition
§412	to organize a sanitary district outside the limits of any incorporated city, village or town within a single county 20% of the legal voters resident within the proposed district
§414.1	to determine whether the trustees of such district shall be appointed or elected 5% of the registered voters within the territory of the district
§437b	to issue bonds to acquire and maintain a drainage system for such sanitary district 10% of the legal voters of such district
§443	to annex territory to a district 10% of the legal voters resident within the limits of such proposed addition
§443a.5	to disconnect from such district 10% of the voters resident within the area proposed to be disconnected
§443d	to acquire and maintain a waterworks 10% of the legal voters of such district
§444	to dissolve such district 50 electors residing within the limits of such district
§450	to organize a surface water protection district 50 or more of the legal voters resident within

the limits of such proposed district or a majority if the district contains less than 100

§454 to add territory to the district
1% of the legal voters resident within the proposed addition

Chapter 43 - Dram Shops

§167 to pass on the question of whether the sale of alcoholic liquor shall be prohibited within a precinct in any city, village or incorporated town of more than 200,000 inhabitants
25% of the legal voters registered from the precinct
incorporated towns of less than 200,000
to pass on the question in cities, villages or
25% of the legal voters from the municipality

§173.1 to change the status of annexed or disconnected area
25% of the legal voters of such area

§174 to continue the prohibition against sale
25% of the legal voters in the area

Chapter 46 - Elections

§6-2 to adopt the City Election Law - city
1,000 legal voters voting at the last preceding election or ⅛ of the legal voters, whichever is less

§6-15 for any village or incorporated town to adopt the provisions of the City Election Law
150 electors of such village or town

§6-17 to reject this act after adoption
1,000 of the legal voters of any city of 100,000 or less or ⅛ of those voters, whichever is less (in cities of less than 250,000 effective July 1, 1985)

§6-20 rejection of the provisions in a village or town
150 electors of such village or town

§6A-1 to establish a county board of election commissioners
1000 or ⅛ of the voters voting at the last preceding general election in the county, whichever is less

§7-10 to nominate candidates for a primary election

a) for State office or for delegate to a national nominating convention (at large)
not less than 5,000 nor more than 10,000 qualified primary electors

b) for a congressional officer or for a delegate from a congressional district to a national convention
600 qualified primary electors

c) for county office
½ of 1% of the qualified primary electors in the county or district

d) municipal or township office
½ of 1% of the qualified primary electors in the municipality, township, ward or district, but not less than 25

e) state central committeeman
100 of the primary electors of his congressional district

f) trustee of a sanitary district
½ of 1% of the primary electors in the district

h) judicial office
500 qualified primary electors in the district or circuit

i) precinct committeeman, ward committeeman, township committeeman
10 primary electors of precinct; not less than 10% nor more than 16% (or 50 more than minimum, whichever is greater) of the ward; not less than 5% nor more than 8% (or 50 more than the minimum, whichever is greater) of the township

k) for any other office
at least 10 primary voters for the district or division

§7-11	to have name of a presidential candidate printed on a party's primary ballot not less than 3000 nor more than 5000 qualified primary electors
§8-8	for nomination for the office of state senator 1% or 600, whichever is greater of the qualified primary electors of the candidate's party in his district for nomination for the office of Representative in the General Assembly 1% or 300, whichever is greater of the qualified primary electors of the candidate's party in his district
§10-3	nominations of independent candidates for office statewide office — 1% of the voters voting at the last preceding statewide general election or 25,000 qualified voters, whichever is less any smaller political district—not less than 5% nor more than 8% (or 50 more than the minimum, whichever is greater) of those voting in the last preceding election in the district or subdivision except that candidates for the General Assembly must obtain not less than 10% nor more than 16%
§28-6	any question of public policy not otherwise provided for to a municipality, township, county or school district 10% of the registered voters of the political subdivision
§28-7	referenda required by Article VII of the Illinois Constitution with respect to any unit of local government 10% of the registered voters in the governmental unit
§28-9	petitions for proposed amendments to Article IV of the Constitution pursuant to Section 3, Article XIV

electors equal to 8% of the total votes cast for Governor in the preceding gubernatorial election

to submit advisory questions of public policy to the voters of the entire state
10% of the registered voters of the entire state

Chapter 81 — Libraries

§2-2 to establish and maintain a free public library in an incorporated town, village or township and to levy a tax
50 legal voters of the political subdivision

§2-6 to require voter approval of the disestablishment of a free library
10% or 1500, whichever is less, of the voters of the municipality requesting the submission of the question

§23 to require voter approval to levy a tax for the establishment of a county public library
5% of the electors residing in the county

§1002-4 creation of a public library district
100 voters of the proposed library district

§1002-7 for conversion of a public library of a municipality into a library district and, additionally to set a maximum tax rate for such district
100 legal voters, or if less than 100 voters a majority thereof in the county, township or municipality

§1002-8(5) to annex territory to a library district
100 legal voters in the proposed area

§1002-9 disconnection from a library district of a city, village, incorporated town, or township which has a public and tax-supported library
100 voters, or where there are 100 or fewer voters residing therein a majority, residing within such political subdivision

§1002-10 dissolution of the district
25% but not less than 100 voters of the district

§1002-11 to merge two or more contiguous districts
10% or 100 of the voters, whichever is more, of the voters residing in the district

§1003-2 to increase the tax levy for the district
100 voters residing in the district

Chapter 85 — Local Government

§1654(a) to establish a solid waste disposal district coextensive with the boundaries of any county under 3,000,000 population
1% of the voters of the county

(b) to establish a solid waste disposal district with boundaries coextensive with township boundaries
1% of the voters in each township of a group of not more than 5 adjoining townships

Chapter 91½ — Mental Health

§202 to require voter approval to levy a tax to provide facilities for the benefit of county residents who are mentally retarded or are under a developmental disability
10% or 1500, whichever is lesser, of the voters of the county

§306 to establish and maintain a community mental health facility and to levy a tax to support in any county, city, village, incorporated town, or township electors of the governmental unit equal to 10% of the total votes cast for the office which received the greatest total votes cast at the last preceding general governmental unit election

§309 to discontinue tax levy
ditto

Chapter 96½ — Natural Resources

§6302 to organize a forest preserve district
500 legal voters residing within the limits of such proposed district

§6330 annexation of territory to a forest preserve district
10% of the legal voters residing within the territory proposed to be annexed

Forest Preserve Districts — counties 3,000,000 or more

§6429 to annex territory to a forest preserve district
10% of the legal voters residing in the territory

Conservation District

§7104 to organize a conservation district in any county having less than 1,000,000 population which is not organized as a forest preserve district
1% of the voters in such county

Chapter 105 — Parks

§2-2 to organize a park district in any territory having less than 500,000 population
100 legal voters resident within the territory

§2-11 nominations of candidates for park district commissioner
qualified voters equal to 2% of the votes cast at the last preceding election for commissioners in such district

§2-20 to incorporate any Township Park District or Pleasure Driveway Park District as a general park district
10% of the electors voting at the last preceding election in the district

§3-2 to annex territory to a park district
100 legal voters residing within the territory

§3-4	to annex an existing park district to another 5% of the legal voters residing in the district to be annexed and 5% of the voters residing in the district to which such annexation is proposed to be made
§5-6	to require voter approval of a tax levy for paving and lighting street 5% of the total number of votes received by park commissioner who received the greatest number of votes (see §5-8)
§5-8	to require voter approval of a tax levy for joint recreational programs for the handicapped electors equal to 5% of the total number of votes cast for the park commissioner receiving the greatest number of votes at the last preceding general park district election
§5-9	to require voter approval to organize and maintain by a tax levy a police system for the district ditto
§9-2b	to levy an additional tax in a park district for an airfield electors equal to 2% of the votes cast for park commissioner who received the greatest number of votes at the last preceding general park election
§9.1-2	to require voter approval of an ordinance to acquire or construct or improve a golf course and facilities 100 electors of the district
§9.2-2	to require voter approval of an ordinance to acquire or construct or improve tennis, racquetball, squash, or handball courts or zoos and facilities 100 electors of the district

§9.3-2 to require voter approval of an ordinance to acquire, maintain or improve recreational facilities
100 electors of the district

§11.1-7 to require voter approval of an ordinance to acquire, construct, or improve harbors and facilities for recreational purposes
electors equal to 5% of the number who voted for the commissioner who received the greatest number of votes at the last preceding general election for commissioner

§13-1 to dissolve a park district
electors equal to ⅔ of the votes cast for the commissioner who received the greatest number of votes at the last general election for commissioner

§226 to authorize the issuance of bonds by a township for the purpose of providing funds for the purchase or improvement of one or more public parks
100 legal voters of the township

§255.30 to require voter approval of the issuance of bonds for the purpose of establishing playgrounds or athletic fields, as Living War Memorials in park districts having less than 500,000 population
50 legal voters of the district

Chapter 108½ — Pensions

§3-145 to provide for a policeman's pension fund in municipalities under 5,000 population
electors equal to 5% of the votes cast at the last preceding general municipal election

§4-141 to provide for a fireman's pension fund in municipalities under 5,000 population
electors equal to 5% of the votes cast in the last preceding general municipal election

§7-134 for inclusion of a municipality in the Illinois Municipal Retirement Fund
300 legal voters or 1% of the legal voters of the municipality, whichever is less

§21-121 to extend social security coverage to municipal employees other than township or school districts
5% of the legal voters of the political subdivision

to extend social security coverage to township employees
5% of the legal voters of the township

§21-124 to determine plan of coverage under any retirement system established by the pension code, with exceptions
10% of the members of the retirement system

Chapter 111½ — Public Health and Safety

§§2,3,3a to establish a public health district
legal voters equal to 10% of the votes cast in the particular political subdivision

§20.1 to levy a tax for public health
voters equal to 10% of the votes cast in the last preceding general election in the district

§20c1 to establish and maintain a county health department
voters representing 10% of the votes cast at the last preceding general election in the county

§20c2 to levy a tax to provide health facilities and services
voters equal to 10% of the votes cast at the last preceding general election in the county

§20c18 withdrawal of a county from a multi-county consolidated health department
10% of the registered voters of the county

§20c23 to require voter approval of the inclusion of a mental health program in the county health department of counties between 300,000 and 1,000,000
5% of the registered voters of the county

§74 to organize a mosquito abatement district
5% of the legal voters of the proposed district, but not less than 25, including a minimum of 5% of the legal voters of any city, incorporated town or village within the proposed territory

§83 to annex territory to such district
lesser of 1,000 or 5% of the voters in the district

Chapter 111⅔ - Public Utilities

§189 to create a public water district in areas having less than 500,000 population
100 legal voters within the proposed district

§212.10 to dissolve such district
100 electors residing within the district

§213 to create a water service district
50 legal voters resident within the proposed district or a majority if less than 100

§223 to establish a water authority
500 legal voters of the proposed authority

§227.1 to require the election rather than the appointment of the commissioners of the authority
10% of the electors of the authority

§227.2 to require the appointment rather than the election of the commissioners of the authority
10% of the electors of the authority

§353.1 to create a local mass transit district
500 legal voters resident within the "participating" area

Chapter 120 - Revenue

§643a — to establish a higher or lower rate limitation in any taxing district
5% of the legal voters in the district based on the last preceding general election in the district, or 1000, whichever is lesser

Chapter 121 - Roads and Bridges

§5-604 — to levy a special tax in a county for highway purposes
100 landowners who are legal voters in the county

§5-604.1 — to require voter approval for a tax levy for roads
5% of the registered voters of the county

§6-108 — to create a consolidated township road district for two or more townships
5% of the legal voters or 50, whichever is fewer, of each of the townships involved

§6-111 — to create a county unit road district in counties of less than 500,000 inhabitants
5% of the legal voters or 50, whichever is fewer, in each of at least a majority of the townships in the county

§6-504 — to increase the tax rate of any road district other than a county unit road district
10% of the registered voters of the district

§6-510 — to authorize the issuance of bonds for road purposes
25 of the legal voters of the district

§6-512.1 — to increase the road tax in any county unit road district
5% of the legal voters of a county

§6-601 — to levy a special tax for road purposes
25 legal voters of any road district

§6-617 to repeal the special tax
25 legal voters of the district

§355 to create a street lighting district
50 legal voters resident within the proposed district or a majority if less than 100 resident

§356a to add territory to a district
50 legal voters resident with the proposed addition

Chapter 122 - Schools

§28-14 to authorize the furnishing of free textbooks for the use of students attending public schools in the school district
5% of the voters of the district

§32-1 to change from a special charter school district and become part of the school township in which situated
50 voters of the district

§32-1.4 to create a board of education in a special charter district
50 voters of the district

§103-1 to organize a community college district
500 voters residing within the proposed territory having not less than $150,000,000 assessed valuation and either a population of 60,000 or at least 3 entire counties or part thereof not containing an existing community college district

§103-7.10 to nominate members of the board of trustees of such districts
50 voters or 10% of the voters residing in the district whichever is less

§106-5.3 to disconnect territory from a community college district
⅔ of the resident voters of the territory

to annex territory to a community college district
1/5 or 500, whichever is applicable, of the resident voters of the territory

§106-7 to annex territory to an existing district or to create a new district
10% or 500, whichever is less of the resident voters of the nondistrict territory

Chapter 127½ - State Fire Marshal

§21 to create a fire protection district
50 legal voters resident within the proposed district or a majority thereof if less than 100

§23 to join an existing fire protection district and assume a proportionate share of the indebtedness
1% of the legal voters resident within the limits of the proposed addition

§24.1 to elect rather than appoint the board of trustees of a fire protection district
10% of the electors of the district

§24.2 to revert to an appointed board
10% of the electors of the district

§34 to require voter approval of an ordinance to increase the maximum allowable tax rate in the district
5% of the electors residing within the district

§34.02 to consolidate two or more adjoining fire protection districts
50 legal voters of each of the districts to be consolidated

§36 dissolution of a fire protection district
50 legal voters resident within the district or a majority thereof if less than 100

§37c	disconnection of territory from a district and to be organized as a new district 1% of the legal voters resident within the territory to be disconnected and organized as a new district

Chapter 139 - Townships

§2	to adopt township organization within a county 50 legal voters of the county
§20	to discontinue township organization 5% of the legal voters of any county under 75,000 and 20% of the legal voters of counties having over 75,000 population
§39.01	to require voter approval of the purchase, sale, conveyance, or lease of property by the township 10% of the registered voters residing in the township
§60	to determine whether the office of township collector shall be an elected office in townships over 100,000 electors equal to 10% of the voters voting at the last general election at which a county officer was elected to discontinue the office of township collector in counties over 100,000 ditto
§127	to reorganize territory within a city of over 3,000 into a township 200 voters of the city
§134	to have the powers of the board of trustees of townships lying wholly within cities of over 50,000 population exercised by the county board 1,000 of the legal voters of such townships

§141	to consolidate territory within a city composed of five or more congressional townships into one township 10% of the legal voters of the city
§151	to authorize a township to erect a monument or memorial in honor of the soldiers or sailors of the township 100 legal voters of the township
§153	to authorize the issuance of bonds for community building purposes in towns under 25,000 50 registered voters
§154	to nominate candidates for the board of managers of a township 10 registered voters of said town
§160d	to abandon the community building project and transfer the funds to some other purpose 50 freeholders of the town
§160d1	to require the community building or site be auctioned and the funds transferred to a township fund for some other purpose 50 electors of the town
§160d2	to require the sale of a community building or site to a school district or some other municipality 50 electors of the town
§160.1	to authorize the levy of a tax to maintain and operate a public nonsectarian hospital 5% of the registered voters, at the time the petition is filed, of the township
§160.3	to discontinue the maintenance and operation of the public nonsectarian hospital 10% of the voters of the township

§160.7	to authorize the establishment and maintenance of a public hospital in townships having less than 500,000 population 5% of the registered voters
§160.36	to require voter approval of an ordinance authorizing the construction and maintenance of a waterworks and sewerage system in townships under 500,000 20% of the registered voters of the township
§323	to authorize the township to acquire land for open space purposes 5% or 50, whichever is greater of the registered voters at the time the petition is filed of the town
§353	to authorize the township to levy a tax for the provision of fire protection, rescue and emergency vehicles and equipment 50 legal voters of the township

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

WALGREEN CO., et al Plaintiffs	)	
v	)	84 Co 209
WALTER KOZUBOWSKI, et al Defendants	)	
and	)	NO.
LOUISE SHOWMAN D/B/A HIDEAWAY LOUNGE Plaintiff	)	84 Co 218
v	)	
WALTER KOZUBOWSKI, et al Defendants	)	

ORDER

This matter comes on to be heard on the intervening defendants' petition to vacate the orders of October 11, 1984 and October 24, 1984, entered in the above causes and having allowed the parties' pleadings in the U.S. District Court case, *Bober et al* v. *Board of Election Commissioners,* 84 C 9380, to be filed in connection with these causes; and further having permitted the intervention of the Illinois Liquor Control Commission and voters in the Bober case;

THE COURT FINDS that Chapter 43 Ill.Rev.Stat. Sec. 167, which requires proponents of a local option petition to submit signatures representing 25% of the voters in the precinct, is unconstitutional for reasons which will be fully explained.

IT IS THEREFORE ORDERED that intervening defendants' petition to vacate said October 11, 1984 order entered in 84 Co 218 and said October 24, 1984 order entered in 84 Co 209 is granted.

IT IS FURTHER ORDERED that the applicable statutes for calculating the required signatures (with the exception of the 25% statute) which are set forth in the order of October 24, 1984, in 84 Co 209, are to be applied

and that portion of the October 24, 1984 order is incorporated by reference into this order.

IT IS FURTHER ORDERED that in the event the number of valid signatures on the said local option petitions equals 10% or more of the legal voters in said precincts, the defendant Board of Election Commissioners is enjoined to certify for placement on the November 6, 1984 ballot the local option questions in the 11th and 41st precincts of the 46th Ward of the City of Chicago.

IT IS FURTHER ORDERED that no later than November 1, 1984, the Board of Election Commissioners with the participation of the parties, consider the objections set forth in plaintiffs' complaints to determine whether the 10% signature requirement has been met.

A Memorandum Opinion will follow at a later date.

November 1, 1984

ENTER:

JOSEPH SCHNEIDER

/s/ Joseph Schneider
Judge

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable BUA

Cause No. 84 C 9380 Date 10/31/84

Title of Cause DENNIS E. BOBER v. BOARD OF ELECTION COMMISSIONERS

Brief Statement of Motion—pl mo prel inj

Illinois Liquor Control Commission and Walgreen Company, Louise Showman d/b/a Hideaway Lounge, and Lewis Windon d/b/a The Note given leave to intervene. Court invokes the abstention doctrine, orders cause dismissed, and refers parties to the Circuit Court.

/s/ Bua J

IN THE

SUPREME COURT OF ILLINOIS

NOS. 60999 & 61081

WALGREEN COMPANY and KLASS BRAKE, INC., LOUISE SHOWMAN, d/b/a THE HIDE-AWAY LOUNGE, Plaintiffs-Appellants, vs. THE ILLINOIS LIQUOR CONTROL COMMISSION, WALTER S. KOZUBOWSKI, City Clerk of the City of Chicago, and THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, Defendants-Appellants, and DENNIS E. BOBER, JEANETTE M. EHRENBERG, EDWARD J. KRSTOLICH, JUJULIEN, STANLEY B. LEE, JUDITH M. BOBER, MICHAEL R. MADDOX, VIRGINIA J. NEWMAN, L.P.F.TANGORA, MARTIN TANGORA, WILLIAM CUNARD, JAMES REIMAN, JAMES R. BRODI, LISA M. POPE, and MARLYS BUCHOLTZ, Defendants-Appellees. and LEWIS H. WINDON, d/b/a THE NOTE: AUTUMN LEAVES, INC., and MOHAMAD KHALIL, its President, and	Notice of Appeal Consolidated Appeal from the Circuit Court of Cook County, County Division. The Honorable Joseph Schneider, Judge Presiding. Case Nos. 84 CO 209 and 84 CO 218

RESERVATION INN., d/b/a) MY PLACE, and ROBERT) WILLNOW, its President,) Defendants-Appellants,) vs.) RUTH KURT, EDWINA SILVERMAN, JACQUELINE) GLEASON, and VINCE ROSSI,) Defendants-Appellees.) and) WALTER S. KOZUBOWSKI,) City Clerk of the City of) Chicago, and THE BOARD OF) ELECTION COMMISSIONERS) OF THE CITY OF CHICAGO,) Defendants-Appellants,) and) NATIONAL CERTIFIED, INC.,) Plaintiff-Appellant,) vs.) WALTER S. KOZUBOWSKI,) City Clerk of the City of) Chicago, and THE BOARD OF) ELECTION COMMISSIONERS) OF THE CITY OF CHICAGO,) Defendants-Appellants.)	Case No. 84 CO 207 Case No. 84 CO 240

NOTICE OF APPEAL
TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appellees, DENNIS E. BOBER, JEANETTE M. EHRENBERG, EDWARD J. KRSTOLICH, JUJU LIEN, STANLEY B. LEE, JUDITH M. BOBER, MICHAEL R. MADDOX, VIRGINIA J. NEWMAN, L.P.F.TANGORA, MARTIN TANGORA, WILLIAM CUNARD, JAMES REIMAN, JAMES R. BRODI, LISA M. POPE, and MARLYS BUCHOLTZ, hereby appeal to the Supreme Court of the United States from the final judgment of this Court reversing and re-

manding with directions the judgment of the Circuit Court of Cook County, filed in this Court on January 23, 1986.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (2).

Dated, March 19, 1986.

/s/ Daniel P. Madden
Attorney for Appellees

DANIEL P. MADDEN
Suite 401
109 North Dearborn Street
Chicago, Illinois 60602
(312) 853-0235

CERTIFICATE OF SERVICE

I, Daniel P. Madden, a member of the Bar of the Supreme Court of the United States and counsel of record for DENNIS E. BOBER, JEANETTE M. EHRENBERG, EDWARD J. KRSTOLICH, JUJU LIEN, STANLEY B. LEE, JUDITH M. BOBER, MICHAEL R. MADDOX, VIRGINIA J. NEWMAN, L.P.F.TANGORA, MARTIN TANGORA, WILLIAM CUNARD, JAMES REIMAN, JAMES R. BRODI, LISA M. POPE, and MARLYS BUCHOLTZ, appellants herein, hereby certify that on March 17, 1986, pursuant to Rule 33 of the Supreme Court, I served copies of the foregoing Notice of Appeal, as follows:

On Walgreen Co., an appellee herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Marion B. Adler, the above-named appellee's counsel of record, at Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60602;

On The Board of Election Commissioners of the City of Chicago, an appellee herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Michael Levinson, the above-named appellee's counsel of record, at City Hall, Room 308, Chicago, Illinois 60602;

On Walter S. Kozubowski, City Clerk of the City of Chicago, an Appellee herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Judson Miner, Acting Corporation Counsel, the above-named appellee's counsel of record, at Room 610, City Hall, Chicago, Illinois 60602;

On The Illinois Liquor Control Commission, an appellee herein, by depositing a copy in the United States Mails, 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Patricia Rosen, Assistant Attorney General, the above-named appellee's

counsel of record, at 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601;

On Klass Brake, Inc., Louise Showman, d/b/a The Hideaway Lounge, Lewis H. Windon, d/b/a The Note: Autumn Leaves, Inc., Moohamad Khalil, Reservation Inn, Inc., d/b/a My Place, and Robert Willnow, appellees herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Michael A. Moses and Morton Siegel, the above-named appellees' counsel of record, at Suite 1700, 20 North Clark Street, Chicago, Illinois 60602;

On National Certified, Inc., an appellee herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to E. Kenneth Wright, Jr., the above-named appellee's counsel of record, at 6326 South Cottage Grove Avenue, Chicago, Illinois 60637;

On Ruth Kurt, Edwina Silverman, Jacqueline Gleason, and Vince Rossi, appellees herein, by depositing a copy in the United States Mails, at 109 North Dearborn Street, Chicago, Illinois, with first class postage prepaid, addressed to Russell J. Stewart, the above-named appellees' counsel of record, at 26 Main Street, Park Ridge, Illinois 60068.

Dated March 19, 1986.

/s/ Daniel P. Madden

Daniel P. Madden
Suite 401
109 North Dearborn Street
Chicago, Illinois 60602
(312) 853-0235

Supreme Court, U.S.
FILED
MAY 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1754

In The

Supreme Court of the United States

OCTOBER TERM, 1985

DENNIS BOBER, et al.,

Appellants,

v.

WALGREEN CO., et al.,

Appellees.

On Appeal From The Supreme Court Of Illinois

MOTION OF WALGREEN CO. TO DISMISS

MARION B. ADLER
(Counsel of Record)
JAMES H. SCHINK
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Attorneys for Walgreen Co.

Dated: May 23, 1986

CHAS. P. YOUNG COMPANY

21 pp

QUESTION PRESENTED

1. Does the requirement that twenty-five percent of the voters sign a petition to initiate a referendum on banning the sale of liquor violate equal protection, or freedom of speech and association?

STATEMENT PURSUANT TO SUPREME COURT RULE 28(1)

Walgreen Co. has no parent, subsidiary, or affiliate corporations (other than wholly-owned subsidiaries).

Please note that the second word of the company's official name belongs in the abbreviated form, "Co."

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Constitutional Provisions, Statutes, and Rules

United States Constitution, Fourteenth Amendment, Equal Protection Clause	*passim*
United States Constitution, First Amendment	*passim*
Ill. Rev. Stat. (1985):	
ch. 24 § 2-3-9	5-6
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In The

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1754

DENNIS BOBER, et al.,

Appellants,

v.

WALGREEN CO., et al.,

Appellees.

On Appeal From The Supreme Court Of Illinois

MOTION OF WALGREEN CO. TO DISMISS

Pursuant to Rule 16 of this Court, Walgreen Co. moves that this appeal be dismissed. It is manifest that the decision below is correct and that no substantial federal question is presented. The Supreme Court of Illinois properly held that a state statute requiring the signatures of twenty-five percent of the electorate to initiate a referendum does not violate the rights of equal protection, or of free speech and association provided by the United States Constitution.

STATEMENT OF THE CASE

Under Illinois law, in the City of Chicago voters may hold a local option referendum within an individual electoral

precinct to determine whether to prohibit the sale of liquor within that precinct. *See* Ill. Rev. Stat. ch. 43 § 167 (1985). To initiate such a referendum, supporters must file a petition containing the signatures of at least twenty-five percent of the precinct's eligible "legal voters." *Id.*

Appellants, who oppose the sale of liquor in the 41st precinct of the 46th ward of Chicago, filed a petition to initiate such a referendum. Walgreen, which operates a retail store in the precinct and is licensed to sell liquor, joined with another liquor licensee to challenge the petition before the Circuit Court of Cook County because the petition contained insufficient valid signatures. The court entered summary judgment, holding that the petition circulators had not satisfied the statute's twenty-five percent signature requirement. Subsequently, the circuit court vacated the summary judgment and ruled that the twenty-five percent signature requirement was an unconstitutional burden on access to the ballot. The court therefore permitted the referendum election to be held in the 41st precinct and it was approved. On appeal, the Illinois Supreme Court reversed the lower court and held that the signature requirement did not infringe any federal constitutional rights.

ARGUMENT

The only federal question presented by this case is whether the requirement that signatures be collected from twenty-five percent of the legal voters to initiate a referendum on prohibiting the sale of alcohol within a precinct violates principles of equal protection, or free speech and association. This is not a substantial federal question and was correctly resolved by the Illinois Supreme Court.

Decisions of this Court have consistently recognized that referendum procedures that enhance minority voting strength are not constitutionally suspect so long as no identifiable class is subjected to invidious discrimination. The

Illinois Supreme Court correctly applied that principle in upholding the twenty-five percent signature requirement.

In challenging the Illinois Supreme Court's decision, the referendum supporters rely upon authorities of this Court that are inapposite. The cases in which this Court has closely scrutinized statutes limiting candidate access to the ballot arise out of distinctive constitutional principles that are not applicable to referendum elections. Similarly, this Court's invalidation on First Amendment grounds of statutes that have infringed on *private* speech surrounding referendum elections—statutes that limit campaign expenditures or advertising relating to referendum elections—have no bearing on a challenge to the procedural mechanism for initiating the referendum itself.

I. THE TWENTY-FIVE PERCENT SIGNATURE REQUIREMENT IS A LEGITIMATE CHECK ON SIMPLE MAJORITY RULE IN LOCAL OPTION REFERENDA.

Under Illinois law, opponents of liquor sales in a precinct within the City of Chicago face a two-step process. First, they must collect a petition with valid signatures from twenty-five percent of the precinct's legal voters; second, they must persuade a majority of the voting electorate on election day to support the referendum. Like the use of bicameral legislatures and executive vetoes, Illinois' two-part procedure for enacting local bans on alcohol sales ensures that such bans represent the considered judgment of the community as a whole and are not made with undue haste. The Illinois Supreme Court specifically found that the signature requirement was justified by the State's legitimate interest in preventing precincts from frequent and ill-considered changes in their wet/dry status:

> The State has a strong interest in maintaining the economic stability of a legally authorized industry and protecting the licensed purveyors of its products from

> irrational and capricious changes in the wet/dry status of their precincts every four years.

(Bober J.S. at 6a.)[1]

This Court has consistently recognized that a referendum election is an alternative to law-making by elected representatives. Therefore, in examining constitutional challenges to referenda procedures, the same standards apply as would apply to rules that determine how a state legislature enacts laws. Just as the process governing enactments by legislatures may incorporate checks and balances that slow down the process and enhance minority voting strength, so too may a referendum procedure.

In *Gordon* v. *Lance*, 403 U.S. 1 (1971), this Court upheld a requirement that a referendum authorizing bonded indebtedness be approved by a super-majority of the electorate; the Court reasoned that such a referendum procedure was in principle no different than if the state legislature itself were required to give super-majority approval. *Id.* at 6-7. Similarly, in *Town of Lockport* v. *Citizens for Community Action*, 430 U.S. 259 (1977), this Court upheld a statute that required referendum approval by concurrent majorities of both the city and noncity voters within the electorate, rather than simple majority approval by the aggregate of the entire electorate.

Likewise, *James* v. *Valtierra*, 402 U.S. 137 (1971), upheld a state statute that required approval by a local referendum for the construction of low income housing projects, even though no local referendum was required for authorization of other types of public housing projects. The Court refused to become entangled in closely scrutinizing "governmental structures" adopted by the states for legislating—whether referenda procedures, gubernatorial vetoes, or filibuster

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[1]The abbreviation "Bober J.S." refers to the Jurisdictional Statement filed by the appellants Dennis Bober, et al.

rules—to determine whether such legislative devices disadvantage persons who seek specific policy objectives. *Id.* at 142.

The only exception that this Court has carved out to the rule that referenda procedures are not subject to close or heightened scrutiny is when the procedures "discriminate against or authorize discrimination against any identifiable class." *Gordon*, 403 U.S. at 7. The twenty-five percent signature requirement for initiating a local option does not discriminate against any "identifiable class." Just as this Court in *Gordon* could "discern no independently identifiable group or category that favor[ed] bonded indebtedness over other forms of financing," so too there is no independently identifiable class that favors alcohol prohibition here. *Id.* at 5.

Further, the broad range of signature requirements adopted by Illinois for initiating different types of referenda demonstrates that the Illinois legislature has made thoughtful, individualized judgments with respect to specific types of public policy decisions, varying the degree to which it intends to encourage or discourage a referendum on each issue. The circuit court in this case appended to its opinion a thirty-page list of the various signature levels imposed by the Illinois General Assembly for initiating a wide variety of binding referenda. (Bober J.S. at 17a-46a.) Depending upon the subject, referenda may be initiated in Illinois by petitions containing signatures of as few as one percent of the electorate and as high as concurrent majorities of the record land owners and voters.[2] The twenty-five percent requirement for initiating a local option is the same as that imposed to initiate referenda on the dissolution of library districts

[2] For example, a referendum on organization of a river conservancy district may be initiated by petition of one percent of the electorate; a referendum on annexation of territory to a municipality requires a petition signed by concurrent majorities of the record land owners and voters. *See* Ill. Rev. Stat. ch. 24 § 7-1-2; ch. 42 § 383 (1985). The appendix to this motion contains the text of the various Illinois statutory provisions cited

(footnote continued on next page)

and to change a city into a village. *See* Ill. Rev. Stat. ch. 24 § 2-3-9; ch. 81 § 1002-10 (1985).

The twenty-five percent requirement for initiating local options reflects a determination by the Illinois General Assembly to make the changing of a precinct's wet/dry status somewhat difficult.[3] This is a legitimate decision for the legislature to make. The Illinois General Assembly could reasonably conclude that frequent fluctuations in a community's wet/dry status would be detrimental to the people who live in that community, the people who do business there, and the people who own property there, both residential and commercial; all of these people may be expecting that the community will retain a certain character when they choose to locate their home or business there, or buy property in that community. Likewise, the legislature could reasonably determine that establishments licensed to sell liquor—including restaurants, hotels, taverns, and retail stores—contribute to the commercial vitality of the State as a whole by generating jobs, tax revenue, and tourism. For these and other reasons, the legislature could reasonably decide to adopt a decision-making process that renders it somewhat difficult for local communities to outlaw liquor sales. This type of "balancing of interests is one for the State to resolve." *Gordon*, 403 U.S. at 7.

(footnote continued from preceding page)

in this footnote and in the above paragraph. See pp. A-1 to A-2, *infra*.

[3]Once a precinct is voted dry by referendum, the same twenty-five percent signature level is required to initiate a referendum to repeal the liquor ban. *See* Ill. Rev. Stat. ch. 43 § 174 (1985).

II. THE CONSTITUTIONAL PRINCIPLES REQUIRING CLOSE SCRUTINY OF BALLOT LIMITATIONS ON CANDIDATE ACCESS ARE NOT APPLICABLE TO REFERENDUM ELECTIONS.

The referendum supporters' principal argument in this case is that, "there is nothing in the nature of referenda that makes them, insofar as access to the ballot is concerned, less of an instrument for the exercise of the rights set forth in *Williams* [v. *Rhodes*, 393 U.S. 23 (1968)], than candidate elections." (Bober J.S. at 8.) This argument simply fails to acknowledge that this Court in *Town of Lockport* explicitly stated that procedures for referenda elections are subject to less demanding scrutiny than those for candidate elections:

> [t]he equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance . . . in analyzing the propriety of recognizing distinctive voter interests in a "single-shot" referendum.

430 U.S. at 266.

To understand why the candidate and referenda cases are different, one has to recall why the "right to vote" in candidate elections received recognition from this Court as deserving special protection: Duly enacted legislation is generally "presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne* v. *Cleburne Living Center*, 105 S.Ct. 3249, 3254 (1985). This presumption of constitutionality is "based on an assumption that the institutions of state government are structured so as to represent fairly all the people." *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 628 (1969). Because the presumption of statutory constitutionality initially depends on the institutions of state government being fairly structured, however, statutes structuring candidate elections are not entitled to this same degree of deference and should be closely scrutinized. *Id.* at 627-28. Starting in *Williams* v. *Rhodes*, 393 U.S. 23 (1968),

this Court therefore began closely examining, and in some cases invalidating, a variety of state statutes that imposed burdensome requirements on independent and minority party candidates for ballot access compared to candidates of major parties. *See, e.g., Anderson* v. *Celebrezze*, 460 U.S. 780 (1983); *Storer* v. *Brown*, 415 U.S. 724 (1974).[4]

In *Town of Lockport*, however, this Court expressly held that such heightened judicial scrutiny does not apply to referenda elections because the fairness or unfairness of referenda elections as to an "identifiable group of voters" is immediately apparent from the outcome without engaging in heightened scrutiny:

> In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives—instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters.

430 U.S. at 266. *Town of Lockport* clearly holds that, so long as no "identifiable group" is unfairly disadvantaged, referenda procedures simply are not subject to any heightened scrutiny.

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[4] Although *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983), was resolved directly under the First Amendment, rather than the Equal Protection Clause, it relied in its analysis on a number of cases decided under this "fundamental rights" strand of equal protection jurisprudence. *Id.* at 786-87 n.7.

III. THE CASES ON CAMPAIGN FINANCING AND ADVERTISING RELATED TO REFERENDUM ELECTIONS ARE INAPPOSITE.

The referendum supporters here also rely on decisions by this Court concerning campaign financing and advertising to argue the unconstitutionality of the signature requirement. They cite *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290 (1981), and *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978), for the proposition that referenda also are entitled to protection under the First Amendment. (Bober J.S. at 8.)

There is no disputing that supporters and opponents of referenda measures are entitled to the full panoply of rights accorded by the First Amendment. Those rights include the right to publicize their views through advertisements, as recognized in *Bellotti*, and to effectively disseminate those views by monetary contributions to political associations, as recognized in *Citizens*. Laws that restrict *private* speech and association surrounding any political topic, including private speech concerning a referendum proposal, constitute an infringement of First Amendment rights.

This case does not involve any restraint on private speech or association surrounding a referendum, however. Rather, the appellants here are objecting to a signature requirement that is an integral part of the substantive process for enactment of the referendum itself. To label this legislative device an infringement of First Amendment rights is like calling a gubernatorial veto or a filibuster rule an infringement of First Amendment rights. Although not explicitly couched in terms of the First Amendment, this Court's decisions in *Gordon* and *James* make it clear that, absent discrimination against an identifiable class, this Court will not become entangled in closely scrutinizing the legislative devices adopted by the States, including their referenda procedures.

IV. THE TWENTY-FIVE PERCENT SIGNATURE REQUIREMENT IS VALID EVEN UNDER THE STANDARD THAT APPELLANTS WOULD APPLY.

Moreover, the appellants' characterization of the twenty five percent signature requirement as a "brutally high barrier" is gross hyperbole. (Bober J.S. at 9-10.) Many precincts in Chicago have held successful local options by complying with this so-called "brutally high barrier." Indeed, a review of the reported cases, alone, between 1970 and 1985 shows that at least thirty-five precincts held valid local option elections in that period. (See list appended to this motion, pp. A-3 to A-4, *infra.*) The Court may take judicial notice of those thirty-five successful local options. *See* F.R.E. 201(b)(2) & (f) (Court may take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" at any stage of proceedings).

When, on average, referenda supporters in more than two precincts per year have successfully initiated local options, it is apparent that "reasonably diligent" people are able to satisfy the signature requirement, and that local options "have qualified [for the ballot] with some regularity." *See Storer* v. *Brown*, 415 U.S. 724, 742 (1974). This is the standard dictated by *Storer*, one of the principal cases concerning candidate access to the ballot relied upon by appellants. (See Bober J.S. at 6, 9.) Thus, even under this more exacting standard, the twenty-five percent signature requirement does not violate any First or Fourteenth Amendment rights.[5]

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[5] In any event, there is no evidence in the record to support appellants' contention that the signature requirement is "brutally high." The constitutional challenge was not raised by appellants until eight days before the election. (Bober J.S. at 9a.) Because of the need to resolve the question on such short notice and because the circuit court believed that the frequency with which local options have been held "merely begs the question," there was no evidence submitted on this point by either side. (*Id.* at 12a.)

CONCLUSION

WHEREFORE, Walgreen Co. respectfully requests that this Court dismiss this appeal. The Supreme Court of Illinois properly held that the twenty-five percent signature requirement for initiating local option referenda does not deprive appellants of equal protection, or freedom of speech and association. No substantial federal question is raised by this appeal.

MARION B. ADLER
(Counsel of Record)
JAMES H. SCHINK
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Attorneys for Walgreen Co.

Of Counsel:

PASQUALE A. ZAMBRENO
WALGREEN CO.
200 Wilmot Road
Deerfield, Illinois 60015
(312) 940-2500

Dated: May 23, 1986

APPENDIX

APPENDIX

Ill. Rev. Stat. ch. 24 § 2-3-9 (1985) provides in relevant part:

> Upon the filing of a petition signed by one-fourth of the registered voters of any city, the city clerk shall certify, in the manner provided by the general election law the question of whether the city shall incorporate as a village, to the proper election authorities who shall submit the question at an election in accordance with the general election law.

Ill. Rev. Stat. ch. 24 § 7-1-2 (1985) provides in relevant part:

> A written petition signed by a majority of the owners of record of land in such territory, and also by a majority of the electors, if any, residing in such territory, shall be filed with the circuit court clerk of the county in which the territory is located. . . . The petition or ordinance, as the case may be, shall request the annexation of the territory to a specified municipality and also shall request that the circuit court of the specified county submit the question of the annexation to the corporate authorities of the annexing municipality or to the electors of the unincorporated territory, as the case may be.

Ill. Rev. Stat. ch. 42 § 383 (1985) provides in relevant part:

> One per cent or more of the legal voters resident within the limits of such proposed [river conservancy] district may petition the circuit court for the county which contains all or the largest portion of the proposed district to cause the question to be submitted to the legal voters of such proposed district, whether such proposed territory shall be organized as a conservancy district under this Act.

Ill. Rev. Stat. ch. 81 § 1002-10 (1985) provides in relevant part:

> Dissolution of a [library] district may be accomplished in the manner following:
>
> 25% but not less than 100 of the voters of a district may petition the Circuit Court of the county which contains all or a greater portion of the district than any other county having territory therein, to order the question of dissolution to be submitted to the voters of the district.

PRECINCTS HOLDING VALID LOCAL OPTIONS THAT HAVE BEEN REPORTED IN ILLINOIS AND FEDERAL CASES SINCE 1970

Precinct Holding Local Option	Case In Which Reported
17th Precinct of 6th Ward	*Love* v. *Marcin*, 47 Ill. App. 3d 715, 365 N.E.2d 100 (1977)
21st Precinct of 6th Ward	*Seals* v. *City of Chicago*, 93 Ill. App. 3d 618, 417 N. E. 2d 843 (1981)
46th Precinct of 6th Ward	*Duncan* v. *Marcin*, 82 Ill. App. 3d 963, 403 N.E.2d 653 (1980)
2nd Precinct of 7th Ward	*Cooper* v. *Marcin*, 44 Ill. App. 3d 918, 358 N.E.2d 1218 (1976)
3rd Precinct of 7th Ward	*Huguley* v. *Marcin*, 39 Ill. App. 3d 230, 349 N.E.2d 564 (1976)
4th Precinct of 7th Ward	*Cooper* v. *Marcin*, 44 Ill. App. 3d 918, 358 N.E.2d 1218 (1976)
12th Precinct of 7th Ward	*Hall* v. *Marcin*, 49 Ill. App. 3d 528, 364 N.E.2d 549 (1977)
23rd Precinct of 7th Ward	*Cooper* v. *Marcin*, 44 Ill. App. 3d 918, 358 N.E.2d 1218 (1976)
28th Precinct of 7th Ward	*Cooper* v. *Marcin*, 44 Ill. App. 3d 918, 358 N.E.2d 1218 (1976)
7th Precinct of 8th Ward	*Hassiepen* v. *Marcin*, 22 Ill. App. 3d 433, 318 N.E.2d 162 (1974)
47th Precinct of 8th Ward	*Schultz* v. *Marcin*, 8 Ill. App. 3d 91, 289 N.E.2d 286 (1972)
96th Precinct of 8th Ward	*Vanderbilt* v. *Marcin*, 127 Ill. App. 2d 192, 262 N.E.2d 42 (1970)
1st Precinct of 9th Ward	*Hall* v. *Marcin*, 49 Ill. App. 3d 528, 364 N.E.2d 549 (1977)
5th Precinct of 9th Ward	*Robertson* v. *Marcin*, 50 Ill. App. 3d 390, 365 N.E.2d 709 (1977)
68th Precinct of 10th Ward	*Cummings* v. *Marcin*, 16 Ill. App. 3d 18, 305 N.E.2d 606 (1973)
38th Precinct of 16th Ward	*Havlik* v. *Marcin*, 132 Ill. App. 2d 532, 270 N.E.2d 189 (1971)
6th Precinct of 19th Ward	*Rafferty* v. *Marcin*, 44 Ill. App. 3d 930, 358 N.E.2d 1276 (1976)
1st Precinct of 21st Ward	*Love* v. *Marcin*, 47 Ill. App. 3d 715, 365 N.E.2d 100 (1977)
49th Precinct of 21st Ward	*Liquor Hut, Inc.* v. *Marcin*, 84 Ill. App. 3d 718, 406 N.E.2d 139 (1980)

Precinct Holding Local Option	Case In Which Reported
40th Precinct of 29th Ward	*Love* v. *Marcin*, 47 Ill. App. 3d 715, 365 N.E.2d 100 (1977)
3rd Precinct of 34th Ward	*Ye Olde Shamrock, Ltd.* v. *Marcin*, 95 Ill. App. 3d 953, 420 N.E.2d 434 (1981)
45th Precinct of 36th Ward	*Ye Olde Shamrock, Ltd.* v. *Marcin*, 95 Ill. App. 3d 953, 420 N.E.2D 434 (1981)
2nd Precinct of 46th Ward	*Schierhorn* v. *Marcin*, 10 Ill. App. 3d 551, 294 N.E.2d 771 (1973)
38th Precinct of 46th Ward	*Schierhorn* v. *Marcin*, 10 Ill. App. 3d 551, 294 N.E.2d 771 (1973)
44th Precinct of 48th Ward	*Ye Olde Shamrock, Ltd.* v. *Marcin*, 95 Ill. App. 3d 953, 420 N.E.2d 434 (1981)
2nd Precinct of 50th Ward	*Young* v. *Marcin*, 66 Ill. App. 3d 576, 384 N.E.2d 404 (1978)
1 Unidentified Precinct	*Zelinka* v. *City of Chicago*, 10 Ill. App. 3d 676, 294 N.E.2d 740 (1972)
4 Unidentified Precincts	*Malito* v. *Marcin*, 14 Ill. App. 3d 658, 303 N.E.2d. 262 (1973)
2 Unidentified Precincts	*Walker* v. *Marcin*, 24 Ill. App. 3d 791, 321 N.E.2d 406 (1974)
2 Unidentified Precincts	*Philly's* v. *Byrne*, 732 F.2d 87 (7th Cir. 1984)

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No. 85-1754

In the
Supreme Court of the United States

OCTOBER TERM, 1985

DENNIS BOBER, et al.,
Appellants,

vs.

WALGREEN CO., et al.,
Appellees.

On Appeal From The Supreme Court Of Illinois

MOTION OF APPELLEES TO DISMISS OR AFFIRM

MORTON SIEGEL
MICHAEL A. MOSES
RICHARD G. SCHOENSTADT
(*Counsel of Record*)
SIEGEL, MOSS & SCHOENSTADT
10 East Huron
Chicago, Illinois 60611
(312) 664-8998
Attorneys for Appellees

Dated: MAY 27, 1986

The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

1. Does a state statute which regulates the sale of alcoholic beverages and contains a requirement that twenty-five percent of the legal voters in a precinct must sign a petition to initiate a binding referendum on banning the sale of alcoholic beverages in that precinct violate the First and Fourteenth Amendments to the United States Constitution?

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The Appellees Klass Brake, Inc., Louise Showman, d/b/a The Hideaway Lounge, Lewis H. Windon, d/b/a The Note, Autumn Leaves, Inc., and Mohamad Khalil, its President, Reservation Inn, Inc., d/b/a My Place and Robert Willnow, its President (hereinafter "Appellees") move this Court pursuant to Rule 16 to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Illinois on the ground that it is manifest that the question on which the decision of the cause depends is so insubstantial as not to need further argument. The Supreme Court of Illinois correctly held that Ill. Rev. Stat. Ch. 43 Sec. 167 (1985) of the Illinois Liquor Control Act does not deprive voters of equal protection nor impinge upon their First Amendment rights.

Further Appellees adopt as their own the arguments raised in the Motion to Dismiss of the Appellee, Walgreen Co. heretofore filed with the Court.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

This appeal raises the question of the validity of a provision of the Illinois Liquor Control Act (hereinafter the "Act") Ill. Rev. Stat. Ch. 43 Sec. 167 (1985). The Act was promulgated in order to regulate the sale in Illinois of alcoholic beverages. Each of the States in the Union has enacted a statute for that purpose.

Section 167 of the Act provides that a referendum election can be held to decide whether a precinct will be "wet" or "dry" if, and only if, twenty-five percent of the legal voters in the precinct sign a petition asking that the question be placed on the ballot.

B. The Proceedings Below

The Appellees are liquor licensees who were successful in judicially resisting the attempt of petitioners (Appellants herein) in three precincts to place on the ballot of the general election of November 6, 1984 the question of whether or not the three precincts would remain wet. The Circuit Court of Cook County, Illinois granted Appellees' Motions for Summary Judgment in the cases wherein the validity of the petitions were challenged. The court held that the petitioners had failed to satisfy the twenty-five percent signature requirement and, hence, the referendum would not appear on the ballot.

On October 29, 1984, Appellants then instituted a separate action in the United States District Court for the Northern District of Illinois seeking to declare Section 167 of the Act unconstitutional. The District Court declined to hear the cases based upon the doctrine of abstention. The case was reassigned to the Circuit Court of Cook County.

The Circuit Court after oral argument of counsel, but with no evidence of any kind being presented, held that the twenty-five percent signature requirement violated the First and Fourteenth Amendments to the United States Constitution; vacated the prior orders of summary judgment in favor of Appellees; declared that the signature requirement would, from that point on, be ten percent; and ordered that the referenda be placed on the ballot in the three precincts in question.

The general election was held on November 6, 1984 and the three precincts in question were voted dry.

Appellees instituted an appeal directly to the Supreme Court of Illinois which reversed the lower court and held that the twenty-five percent signature requirement "did not deprive voters of equal protection nor impinge upon their first amendment rights to contribute funds, advertise, or associate with other voters in support of a referendum." (Bober J.S. at 7a.)[1] The Illinois Supreme Court further ordered that the Circuit Court enter judgment holding the petitions and referenda invalid.

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[1] The abbreviation "Bober J.S." refers to the Jurisdictional Statements filed by Appellants Dennis Bober, et al.

II.

ARGUMENT

The Case Presents No Substantial Question Not Previously Decided By This Court

Liquor destined for use and consumption within a state is constitutionally unique in that Section Two of the Twenty-First Amendment is the only presently operative portion of the Constitution which this Court has construed as granting power to the states to regulate an industry. Kamenshine, *California* v. *LaRue*: *The Twenty-First Amendment as a Preferred Power,* 26 Vand. L.Rev. 1035, 1039 (1979). There is significant legal history supporting the notion of state primacy in regulating liquor.

On January 16, 1919, the Eighteenth Amendment was ratified thereby creating prohibition. However, in December, 1933 the Twenty-First Amendment was ratified which not only repealed the Eighteenth Amendment, but also conferred extraordinary powers on the states to regulate this single article of commerce—intoxicating liquor.

The intent of Congress to divest itself of primary regulatory power in favor of state control of the beverage alcohol industry relative to matters within the State is best seen by the elimination of Section Three of the initial constitutional amendment introduced for ratification. Section Three provided for concurrent federal and state power to regulate or prohibit the sale of intoxicating liquors. Therefore, the elimination of Section Three is a clear indication of Congress' intention to delegate to the states the primary regulatory power.

Based upon the express grant of authority to the states to regulate the sale of liquor, each of the fifty states enacted a statute governing the sale of alcoholic beverages.[2] The State of Illinois has operated pursuant to the Act since 1934 which is itself indicative of the fact that Illinois' public policy is one which favors legalizing the sale of alcoholic beverages. The Illinois legislature has been free all of these years to modify the twenty-five percent signature requirement in favor of a lesser percentage or to eliminate it altogether, but it chose not to. Rather, it chose to enact a method which promotes the aforesaid public policy and which intentionally makes difficult the method of prohibiting the sale of liquor. It is important to note that the same twenty-five percent signature requirement also applies to those wishing to vote on permitting the sale of liquor in what currently may be a dry precinct. Thus, the standard is the same for both proponents and opponents of the sale of alcoholic beverages.

In point of fact, the twenty-five percent requirement has fairly served the public interest since greater than ten percent of Chicago's precincts have been voted dry.[3]

The Circuit Court wrongfully imposed its will upon the people of the State of Illinois. Despite the clear delegation of power to the states to regulate this unique industry and despite the well established separation of powers

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[2] Appellants have set forth an Appendix wherein each State is listed with reference to the percentage requirement for access to the ballot. Thirty-six states provide for local option elections.

[3] Precinct boundaries contained on the Ward maps which are under the custody and control of the Board of Election Commission of the City of Chicago. (Public records.)

doctrine, the lower court declared the twenty-five percent signature requirement unconstitutional and inserted a ten percent requirement on its own. The ten percent requirement was borrowed from a provision of the Illinois Election Code which deals with advisory non-binding referenda. A clearer case for the usurpation of legislative power could not be fashioned.

Appellants have applauded the Circuit Court's order and stated that:

> "The Circuit Court of Cook County faced the hard choice of balancing the interest of the state and its citizens. The trial court's determination that a ten percent signature requirement served the interests of both the voters and the state was a carefully-reasoned exercise in judicial analysis and decision-making." (Bober J.S at page 10.)

What Appellants and the trial court fail to realize is that it is not within a trial court's province to legislate; the decision was not its to make. The Twenty-First Amendment makes it abundantly clear that the states are to regulate the liquor industry. The State of Illinois has done so and until it adopts a different policy, the Circuit Court cannot thrust its own notions of lawmaking upon the citizens of the State. The trial court ventured into an area reserved to the legislature and absent a showing that the Act will deprive the complaining class of its constitutional guarantees, the Act should be modified or eliminated only by elected lawmakers. Such a showing was not made before the trial court. Further, it is not within the province of the courts to legislate public policy. *State of Minnesota* v. *Clover Leaf Company,* 449 U.S. 456 (1981); *Seagram* v. *Hostetter,* 384 U.S. 35 (1966).

The Illinois legislature, fifty-two years ago, determined that a twenty-five percent signature requirement served the interests of the voters and the state. It did so pursuant to the Twenty-First Amendment. Appellants have virtually ignored the legitimate and constitutionally mandated interest that the states have in regulating the sale of alcoholic beverages. The Supreme Court of Illinois upheld and vindicated that interest by reversing the lower court's order.

Finally, although Appellants have adopted the mistaken position that this cause is not governed by the Twenty-First Amendment, it is important to remember that in an abundance of cases, the Twenty-First Amendment has prevailed when in conflict with the First and Fourteenth Amendment. See *Dunagin and Lamar Outdoor Advertising* v. *The City of Oxford, Mississippi and Mississippi Tax Commission*, 718 F.2d 738 (5th Cir. 1984); *Queensgate Investment Co., d/b/a Holiday Inn* v. *Liquor Control Commission*, 69 Ohio 2d 361, 433 N.E.2d 138 (1982); *Ziffrin, Inc.* v. *Reese*, 308 U.S. 132 (1939); and *Indianapolis Brewing Co.* v. *Liquor Control Commission*, 305 U.S. 391 (1939).

Therefore, Illinois has enacted legislation pursuant to the Twenty-First Amendment which legislation furthers the State's interest in the sale of alcoholic beverages and the First and Fourteenth Amendments must be applied to the statute in that context. It is precisely in that context that the Illinois Supreme Court held that the trial court erred in declaring the twenty-five percent signature requirement of the Act unconstitutional.

III.

CONCLUSION

The Appellees respectfully submit that the question upon which this cause depends is so insubstantial as not to need further argument and move this Court to dismiss this appeal In the alternative, Appellees respectfully move this Court to affirm the decision of the Supreme Court of Illinois that Section 167 of the Act is not violative of the First and Fourteenth Amendments.

Respectfully submitted,

MORTON SIEGEL
MICHAEL A. MOSES
RICHARD G. SCHOENSTADT
(*Counsel of Record*)
SIEGEL, MOSS & SCHOENSTADT
10 East Huron
Chicago, Illinois 60611
(312) 664-8998
Attorneys for Appellees

APPENDIX

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TATE	LOCAL OPTION ELECTION LEGISLATION	PERCENTAGE REQUIREMENT FOR ACCESS TO BALLOT/ CITATION	POLITICAL SUBDIVISION EFFECTED BY VOTE
Alabama	Yes	25% / Ala. Code § 28-2-1 (1975)	County
Alaska	Yes	35% / Alaska Sta. § 04.11.502 (1980)	Municipality
Arizona	No	N/A	N/A
Arkansas	Yes	15% / Ark. Stat. Ann. § 48-801 (1977)	County
California	No	N/A	N/A
Colorado	Yes	15% / Colo. Rev. Stat. § 12-47-140 (1978)	Municipality, City or County
Connecticut	Yes	10% / Conn. Gen. Stat. Ann. § 30-10 (1975)	Town
Delaware	No	N/A	N/A
District of Columbia	No	N/A	N/A
Florida	Yes	25% / Fla. Stat. Ann. § 567.01 (West 1962)	County
Georgia	Yes	35% / Ga. Code Ann. § 3-4-41 (1982)	Municipality or County
Hawaii	No	N/A	N/A
Idaho	Yes	20% / Idaho Code § 23-1304(1977)	City or Village

STATE	LOCAL OPTION ELECTION LEGISLATION	PERCENTAGE REQUIREMENT FOR ACCESS TO BALLOT/ CITATION	POLITICAL SUBDIVISION EFFECTED BY VOTE
Illinois *	Yes	25% / Ill. Rev. Stat. Ch. 43, § 9 (1983)	Precinct
Indiana	No	N/A	N/A
Iowa	No	N/A	N/A
Kansas	Yes	30 - 40% / Kan. Stat. Ann. § 41-302 (1981)	City
Kentucky	Yes	25% / Ky. Rev. Stat. § 242.020 – (1980)	County, City, Town or Precinct
Louisiana	Yes	25% / La. Rev. Stat. § 582 (West 1975)	Parish, Ward, or Incorporated Municipalit
Maine	Yes	15% / Me. Rev. Stat. Ann. tit. 28, § 101 (1974)	City, Town or Plantatior
Maryland	NO	N/A	N/A
Massachusetts	Yes	10% / Mass. Gen. Laws Ann. Ch. 138, §11 (West 1974)	Town or City
Michigan	yes	35% / Mich. Comp. Laws Ann. § 436.56 (West 1978)	City or Township
Minnesota	Yes	30% or 200, which ever is less Minn. Stat. Ann. § 340.20 (West 1972)	City
Mississippi	Yes	20% or 1500, whichever is less Miss. Sta. Ann. § 67-1-11 (1972)	County

STATE	LOCAL OPTION ELECTION LEGISLATION	PERCENTAGE REQUIREMENT FOR ACCESS TO BALLOT/ CITATION	POLITICAL SUBDIVISION EFFECTED BY VOTE
Missouri	Yes	20% Mo. Ann. Stat. § 311.110 (Vernon 1963)	City
Montana	No	N/A	N/A
Nebraska	Yes	20% / Neb. Rev. Stat. § 53-122 (1978)	City or Village
Nevada	No	N/A	N/A
New Hampshire	Yes	10% / N.H. Rev. Stat. Ann. § 179:1 (1978)	City or Town
New Jersey	Yes	15% / N.J. Stat. Ann. § 33:1-45 (West 1940)	Municipality
New Mexico	Yes	5% / N.M. Stat. Ann. § 60-5A-1	District
New York	Yes	25% / N.Y. Alco. Bev. Cont. Law 141 (McKinney 1970)	Town or City
North Carolina	Yes	25% / N.C. Gen. Stat. § 18B-601 (1983)	County or City
North Dakota	No	N/A	N/A
Ohio	Yes	35% / Ohio Rev. Code Ann. § 4301.33 (Page 1982)	District
Oklahoma	No	N/A	N/A
Oregon	Yes	10% / Or. Rev. Stat. § 471.506 (1983)	City or County
Pennsylvania	Yes	25 % / Pa. Stat. Ann. tit. 47, § 4-472 (Purdon 1969)	Municipality
Rhode Island	Yes	10 - 15% / R.I. Gen. Laws Laws §3-5-2 (1976)	City or Town

STATE	LOCAL OPTION ELECTION LEGISLATION	PERCENTAGE REQUIREMENT FOR ACCESS TO BALLOT/ CITATION	POLITICAL SUBDIVISION EFFECTED BY VOTE
South Carolina	No	N/A	N/A
South Dakota	Yes	15% / S.D. Codified Laws § 35-3-8 (1977)	Municipality or Township
Tennessee	Yes	10% / Tenn. Code Ann. § 57-3-106 (1980)	County or Municipality
Texas	Yes	35% / Tex. Alco. Bev. Code Ann. § 251.11 (Vernon 1978)	County, Justice, Precinc Town or City
Utah	No	N/A	N/A
Vermont	Yes	5% / Vt.Stat. Ann. tit. 7 § 161 (1972))	Town
Virginia	Yes	10% / but no less than 100/ Va. Code § 4-45 (1983)	County, City or Town
Washington	Yes	30% / Wash. Rev. Code Ann. § 66.40.040 (1962)	City or Town
West Virginia	Yes	5% / W.V. Code § 60-5-2 (1984)	County, District or Municipality
Wisconsin	Yes	15% / Wis. Stat. Ann. § 125.05 (West 1984)	Municipality
Wyoming	No	N/A	N/A

* Prior to entry of Orders Appealed from

SUMMARY OF THE ABOVE

1. Of the 50 states together with the District of Columbia 36 have local option election legislation.

2. Of those 36 states with legislation, 89% deal with political subdivisions larger than a precinct classification:

   (a) 33-⅓% of these states require signatures of 25% or more.

   (b) 39% of the states require signatures of 20% or more.

3. The States of Texas, Kentucky and Louisiana are the only other states which allow local option elections in a political subdivision as small as a precinct. Yet these states require signatures of 25% to 35%.